INSTITVTIONS,

OR, LAW

Principall grounds of the Lawes and Statutes of *England.*

Newly and verie truly corrected and a-*mended, with many new and good ad-*ditions: very profitable for all *sorts of people to know,* late-ly augmented and *Imprinted.*

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Cum Priuilegio.

The Prologue of the Author, to the *Reader*.

Emosthenes the renowned Orator, defineth Law in this wise The Law (saith he) is the thing that all men ought to obey for many causes, but especially because law is the inuention, and also the gift of God, the decrees of prudent men, the chastisement of offences, and finally the common suerty of a realm whereby it becommeth all men to liue, which be conuersant in the same. Chrisippus also, an excellent Phylosopher, thus beginneth his booke of Laws. The Law is king of all, as wel diuine as humaine affaires, the president and controller of things honest and dishonest, the Prince, the Captaine, and the Ruler of the iust and vniust, and it is of ciuill creatures, aswell the commander what they ought to do, as the forbidder of what they ought not to do. These authentike sayings of wise men, assuredly ought much to inflame vs to the knowledg of these things without which we shal be established as no men, but as brute and sauage beasts. Let vs not commit that, that it be said of Englishmen, as it was once said of the men of Athens, that is, that we make very good & profitable Lawes, but we vse them not. Certainly there can be no greater reproch to a Commonwealth, then this. One Lesson I would we learned of the antient Roman Lawyer named Celsus, and that

28

is this: The knowledge of Law is not to beare away the words, but the pith and power of them. This is written, becauſe there be many which when good and wholſome Lawes be made, ſeeke not to ſee them executed, and obſerued, but rather how to defraud them and to haue them vnexecuted: which kinde of people after the ſentence of moſt antient Lawmakers, be no leſſe worthie of reprehenſion then they which do expreſly againſt the Law. Now they do (ſay they) againſt the Law, which do the thing which the Law forbiddeth. And they defraud a law or ſtatute, which, the words of the Law ſaued, do peruert the meaning and ſence of it.

Let vs then ſo reade the Law, that we may beare away the ſence and meaning of them, and ſo fulfill and obſerue the Lawes, that it may appeare, that they were not made in vaine. Thus doing we ſhall pleaſe God, we ſhall be obedient ſubiects to our Prince. And finally, we ſhal ſeek our owne weale and ſafetie.

* * *

What

What is Law. Chap. 1.

THe Law is the direction and miniſtration of Iuſtice. And Iuſtice is (as the Emperour Iuſtinian ſaith in his inſtitutions) a conſtant and parmanent will, to render vnto euerie perſon his right and dutie. The learning or prudence of the law, is a knowledge of diuine and humaine things, a ſcience and perfect notice of equitie, and iniquitie, of right or wrong.

Now forasmuch as a great portion of the prudence, or ſcience of the Lawes of this Realme of England, conſiſteth in the perfect knowledge of Eſtates, which men haue in lands & tenements, we ſhal firſt as compendiouſly, and as ſimply and plainly as we can, treate ſomewhat of eſtates.

A diuiſion of Eſtates. Chap. 2.

YE ſhal therefore vnderſtand, that whoſoeuer hath any eſtate in lands or tenements, either he hath in the ſame onely a chattell, or free-hold, or an inheritance. If he hath an eſtate but for terme of certaine yeares, or at his landlords will, then it is called a chattell: if for terme of his life, or for anather mans life, it is called a free-hold. And if he hath to him and to his heires in fee ſimple, or in taile, then he hath an eſtate of inheritance.

Chattell.

Free-hold.

Inheritance

Tenant for terme of yeares. Chap 3.

TEnant for terme of yeares, is he to whom lands or tenements be let for terme of cer-

taine yeares as is agréed betweene the landlord and the tenant. And when the person to whom such lease is made, doth enter by force of the said lease, and is in possession of the same, then he is called a tenant for terme of yeares.

Rent reserued.

And here yée shall note, that if the lessor that made the lease, hath reserued vnto him a yearely rent vpon the said lease, as is accustomably vsed to be done, if the rent be behind and vnpayed, it shall be in his election, either to enter and distrain for the rent, or to bring an action of debt against the tenant for the arrerages of the same. But in this case it is requisite, that the lessor were seised of the lands or tenements at the time of the making of the lease, for otherwise it shall be a good plée in the action of debt, for the tenant, to say the lessor had nothing in the lands and tenements at the time of the lease made, except the lease were made by déed indented, for then this plée shall not be in the tenants mouth to plead.

Action of Debt.

A good plee.

Liuerie of seison needeth not in a lease for terme of yeares.

And it is to be knowne, that in a Lease for tearme of yeres, whether it be by déed, or without déede, there néede no liuery of seison to be made to the lessée, but he may enter when he will by vertue of his lease, without any further ceremonie of the law.

And if a man leaseth lands for terme of years, though the lessor chanceth to die before the lessée doth enter, yet he may enter well enough: Otherwise it is where liuerie of seison is to be made, as in freeholds and inheritances.

Waste.

And if ỹ tenant for yeres doth waste, ỹ landlord may bring an action of waste against him and shall recouer the place wasted, & his trebble damages.

Also

Also if a lease for yeares be made of two seuerall things, & after the one is recouered, the lessee shall hold the other, and the rent or farme shall be apportioned, M. 12. H. 8. Cor

Also if the Tenant for yeares graunteth a greater estate in the land, then he hath himselfe, whereby he conueyeth the fee simple to himselfe, he shall forfeit his lease or terme. Forfeiture.

Tenant at will. Chap. 4.

TEnant at will, is he, to whom lands or tenements be leased to haue and to hold the same at the will of the lessor. And in this case the lessour may put out his tenant at what time hee listeth. But yet neuertheless, if the tenant haue sowed the ground with Corne, in this case if the lessor will enter and put out his tenant before haruest, the law will giue him free comming and going to reape and carry his Corne away, without any punishment or damages to bee sustained for his so doing, because hee knew not at what time the lessor would enter. But otherwise it is of tenant for terme of certaine yeares, for if hee soweth the ground, and his terme of his lease bee come out and expired before the Corne be ripe, in this case the lessor or he in the reuersion may enter and take the Corne, because it was the follie of the tenant to sow the ground, knowing the end of his terme.

In like maner, tenant at will shall haue free comming and going after the time of the lessors entrie, to carry away his houshold stuffe & goods for a reasonable space.

Ye shall also vnderstand, that he that maketh a

lease at will, may reserue an annuall or yearely rent, in which case if the rent be behind, he may enter very well, and distraine the goods and chattels of the tenant, or at his election he may bring an action of debt against him.

Distres, or action of debt.

Also it is to be knowne, that tenant at will of a house or tenement, is not bound by the order of the law to sustaine, and repaire the houses that be decaied and ruinous, as is the tenant for yeres and therefore no action of wast lieth against him: yet if he will do wilfull wast, as if he plucketh downe the houses, or cutteth downe the trees: it hath beene thought by the Sages of the law, that the lessour may bring an action of Trespasse against him, and shall recouer his losses thereby sustained +

Wast.

Trespasse.

there be 2 kinds of waste. voluntary or actuall. Permissive. Tenant at will committing voluntary wast an action of trespasse lieth against him, but not for permissive wast.

And if such a tenant die, and his heire enter, in that case the lessour may haue an action of Trespasse against the heire for his entrie.

Tenant by Copy of Court roll. Chap. 5.

There is another kind of tenant at wil, which is called tenant by Copy of the court Rolles. And this is, when a man is seised of a manour, within which it hath beene vsed time out of mind, that the tenants within the bounds and precinct and of the said Manour, haue holden lands and tenements to them, and to their heirs in fee simple, fee taile, or for terme of life, at the wil of the Lord, according to the custome of the manour. And such a tenant cannot alien or sell his land by his deede, for if he doe, the land or tenement that is so alienated and sold, is forfait into the Lords hands, but if he will alien his copihold land

land to an other, he must according to the custom, come into the Lords court, and there surrender it into the Lords hand, to the behoose and vse of him that shal haue the estate. The forme of which surrender is commonly vsed to be thus. Surrender.

Ad hac Curiam venit A.de B.& sursum reddidit in eadem Curia vnum mesuagium,&c.in manus domini,ad vsum C.de D.& heredum suorum,vel heredum de corpore, &c. Et super hoc venit prædictus C.de D.& cepit de domino in eadem Curia mesuagium prædictum:Habendum & tenendum sibi,&c.ad voluntatem domini secundum consuetudinem manerij, faciendo inde reddditus, seruicia,& consuetudines inde prius debitas & consuetas,&c. Et dat domino pro fine, &c. Et fecit domino fidelitatem. The forme of a surrender.

These as I said be called tenants by copie of court roll,because they haue none other euidence to shew concerning their lands,saue onely the copies of the rolls of their Lords court.

Neither can these Tenants sue or be sued for such lands in the Kings Court,by writ or otherwise. But if they will in any wise implead or sue others for such copie lands, they must doe it by way of plaint in ỹ Lords court after this forme.

A.de B.queritur versus C.de D de placito terre, videlicet,de vno mesuagio,xl.acris terræ,iiij.acris prati,&c.cum pertinentijs,& facit potestationem sequi quærelam istam in natura breuis domini Regis assisæ mortis anteceſſoris ad communem legem Pol' &c.Plegij de prosequendo F.O.&c. The forme of the plaint.

Now although some such tenants haue an inheritance according to the custome of the manour yet in very deede they are but tenants at the will of

of the Lord. For as some men thinke, if the Lord will expell them and put them forth, they haue no remedie at all, but to sue vnto their Lord by way of petition, desiring him to be a good & gracious lord vnto them. For if they might haue any remedie by the law, then should they not be called (say they) tenants at the will of the Lord after the custome of the mannor. But other men of no lesse learning, and prudence, haue been of contrary iudgement, as Lord Brian chiefe Iustice, in the time of King Ed. the fourth, whose opinion was alwayes, that if such a tenant by the custome (paying his services) be reiected & put forth by his Lord without cause reasonable, he may very well bring and maintaine an action of trespas against the Lord at the common Law, as appeareth termiñ Hillarij, Añ 21. E. 4. Also Lord Danby chiefe Iustice likewise, was of the same iudgment, as appeareth termino Mich. Añ 7. E. 4. where hee sayth, that the tenant by custome, is as well inheritable to haue his land after the custom, as he is that hath a freehold at the common law: but the determination of this question, I remit to my great masters, which can loose the knots and ambiguities of the law. Forasmuch as yet still of this matter, Causidici certant, & adhuc sub Iudice lis est.

Action of Trespasse.

Also ye shall vnderstand, that the vsage of some manour is, When the tenant will surrender his land to the vse of another, that hee shall take a wand or a rod in his hand, and deliuer it to the steward of the court, and the steward shal deliuer the same wand in name of seisin, to him that shall take the land, and such a tenant is called a tenant

by the verge. Diuers other customes there be of surrendring of Copie hold lands, which here for tediousnesse I will omit. And forasmuch as tenants by custome of the Manour, haue by the course of the common law no freehold: therefore they be called tenants of base tenure. Base tenure

Also if such a tenant letteth to farme his copie hold land for longer time then a twelue moneth and a day, without the Lords licence, it is a forfaiture of his land to his Lord.

And know ye, that if this tenant fell any timber that groweth vpon the land, but onely for the reparation of the same, this is wast and a forfaiture of his Copie hold.

Hitherto haue I treated of the first member of our diuision, that is to wit, of chattels: for as I said, all leases for terme of yeares, and at will, be accounted in the law, but as chatels, and be comprised vnder that name, saue that these be called chattels reals: whereas Kine, Oxen, Horses, Money, Plate, Corne, and such like, be called chattels personalls. Chattels reall and personall.

Now we will proceed to the explanation of the second member, that is to say, of free holds.

Free

FReeholds or franke tenements a man may haue in sundrie wise, for either he is seised for terme of his owne life, or for terme of another mans life. If he be seised for terme of his owne life, either he hath gotten such estate by way of purchase, or else the law hath intituled them thereunto. I call it by purchase, whether he commeth vnto it by his own bargaining and procurement or by the gift of his friend: and I call it by the operation or intituling of the law, when a man marrieth a woman that is an inheritrix, and hath issue by her, and she dieth, now shall he haue the lands during his life, by course of the law, and shall be called tenant by the curtesie of England.

Tenant by the curtisie.

In likewise, if a man be seised in fée simple, or fée taple of lands, and taketh a wife, and he dieth, the law giueth vnto the wife the third part of her husbands lands for terme of life, and she shall be called tenant in dower.

Tenant in dower.

Tenant for terme of life. Chap. 7.

TEnant for terme of life, is he that holdeth landes or tenements for terme of his owne life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is, to call him that hath an estate for terme of his owne life, tenant for life, and him that hath an estate for terme of an others life, tenant for terme dauter vie, that is to say, tenant for terme of an others life.

Ye shall note, that like as he that maketh the lease is called the lessour, and he to whom the lease

leaſe is made, is called the leſſée, ſo he that maketh a feoffement, is called the feoffor, and he to whom the feoffement is made, the feoffée.

Alſo if the tenant for terme of life, or tenant for terme of another mans life, doe waſt, the leſſor, or he in the reuerſion, ſhall maintaine verie well an action of waſt againſt him, and ſhall by the ſame recouer treble damages. Waſt.

Finally, ye ſhall vnderſtand that by an Act of Parliament made in the xxvij. yeare of our Soueraigne Lord King Henrie the eight, it is enacted, that no freé hold, nor eſtate of inheritance, ſhall paſſe nor take effect by reaſon of any bargaine and ſaile, except that ſame be made by writing indented, ſealed and enrolled in one of the Kings Mateſties Courts at Weſtminſter, or elſe within the Countie where the land doth lie, before the Cuſtos Rotulorum, and two Juſtices of Peace, and the Clerke of the Peace of the ſame county, or two of them at the leaſt, of which the ſaid Clerke ſhall be one, and that ſuch inrolment be made, within ſix monethes after the date of ſuch writing. And for the enrolment of euery ſuch writing, where the land compriſed therein, is not aboue the yearely value of fortie ſhillings, they ſhall take two ſhillings, that is twelue pence to the Juſtices, and twelue pence to the Clerke. And if the land be aboue the yearely value of xl. s. then they ſhall take fiue ſhillings, that is, two ſhillings and ſix pence to the Juſtices, and two ſhillings ſix pence to the Clerke, which ſhall inroll and ingroſſe ſufficiently in parchment ſuch deedes and writings, and at euery yeares end he ſhall deliuer the ſame to the Cuſtos Rotulorum

of

of the same countie, to remaine in his custodie among other records of the same countie, so that the parties resorting thither may see them. Prouided, that this extend not to any tenements or hereditaments lying within any City or Towne corporat, wherein the Maiors, Recorders, or other officers haue authoritie, or haue lawfully vsed to enroll any euidences or writings within their precinct.

Tenant by the curtesie. Chap. 8.

TEnant by the curtesie of England, is he that hath married a wife inheretrix, and hath had issue by her, and she is dead, in this case the Law of England permitteth and suffereth the husband of such wife, to receiue and keepe still all his wiues lands that she had either in fee simple, or fee taile, so long as he liueth. And this is by the curtesie, a vsbantitie of England, for this thing is vsed in none other Country nor religion. But in this, it is required that the child be vitel, that is to say, be borne and brought forth into this world aliue, and therefore the common saying is, and hath bin, that vnlesse the child be heard cry, the father shall not be tenant by the curtesie, for the onely proofe and argument of life in an infant borne, is the bagite and crying. Ye shall furthermore vnderstand, that vnlesse the husband be in actuall and reall possession of his wiues lands, and seised of them in her right, he shall not be tenant by the curtesie after her death. And therfore if lands descend to a mans wife, so that she is tenant in the law, and to euery mans actions, yet

if the husband haue not made an actuall entry dur-
ing coverture and matrimonie betweene them,
he shal not be tenant by the curteſie, for it shall be
reputed and iudged his folly and negligence that
he would not enter in her life time.

Otherwise it is of auowlans, rents, commons
and such other things, which forthwith when
they descend, be in a man, or in a woman, without
any entry or further ceremony of law.

Note, that if tenant by the curteſie of England
will suffer, or make any wast in the lands or te-
nements that he so holdeth, he is punishable
therefore, by an action of wast brought by him in
the reuersion.

Also it is to be knowne, that of things that be
in suspence, a man shall not be tenant by the cur-
teſie, and therfore if a man be tenant in fee simple
of certaine land, and doth intermarie with a wo-
man that is the Segniorelle or Lady of the same
and hath issue by her, and she dyeth, yet shall he
not be tenant by the curteſie of the Lordshippe or
Seigniory, because himselfe is tenant of the land
and therefore the Lordshippe is suspended for the
time: for a man cannot be both Lord and tenant
of one thing: but if he had not been tenant of the
land, he should haue had the Lordship after the
death of his wife, by the curteſie of England ve-
ry well.

Also note, that of a right onely, a man shall not
be tenant by the curteſie: as if a woman sole sei-
sed in fee of lands or tenements, be disseised, and
after take a husband, and they haue issue, and ſhe
die before any reentrie made, the husband shal not
be tenant by the curteſie.

Note

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of land in fee, make a lease to D. for terme of life, and after taketh a husband, and they haue issue, and she die, liuing the lessee for terme of life, the husband shall not be tenant by the curtesie.

Of Tenant in Dower. Chap. 9.

TEnant in Dower, is shee that hath beene married to an husband that was during the matrimony betweene them, seised of lands or tenements in fee simple, or fee taile, which is now dead, and she seised of the third part of her husbands said lands for terme of her life: for by the common law of the Land, if the husband be at any time during the couerture seised lawfully, whether it be by purchase, or descent, either in fee, or in fee taile, and die, his wife shall be endowed by the course of the common law of the third sorte. And in some places by an antient custome, she shall be indowed of the moitie: yea and though her husband were neuer seised actually during the couerture, yet if the lands be cast vpon him by the law, so that the law calleth him tenant to euerie mans action, it sufficeth the woman to demaund her dower: For it were vnreasonable that the negligence and slacknesse of entring of the husband, should hurt the wiues title.

Dower at the common law.

Dower by custome.

Tenant by the curtesie

Otherwise it is, as it is said before, of tenant by the curtesie: for if the lands descend to a woman couert, and the husband for slouthfulnesse or negligence doth not enter in his wiues life, he shall not be tenant by the curtesie, for by all lawes the wife oweth obedience and subiection to her husband

husband, and therefore she cannot compell him to enter: but when lands descend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall understand, that unlesse the wife be aboue the age of nine yeares at the time of her husbands death, she shall not be endowed by the common Law.

But it is to be knowne, that a woman may by diuers wayes estoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murder, or felonie, she shall haue in this case no dower, notwithstanding she hath obtained her pardon. A woman shall haue no dower.

Also, if after the death of her husband shee taketh a lease for terme of life, of the same landes whereof she is indowable, she loseth her dower of the same. Moreouer, if she depart from her husband, and liueth in adulterie with another man, and is not reconciled againe to her husband, without coertion of the Ecclesiasticall power, she loseth her dower after her husbands death. She shall be also barred of her dower, if she will withhold from the heire, the charters and euidence, concerning that land whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause. No dower.

It ought to be knowne also, of what things she may demand dower, and of what things not: Of Landes, Messuages, Aduowsons, Rent-charge, Rent-seruices, or Seignories in grosse, or otherwise of villanies, of commons certaine, of estouers certaine, of milles, and offices, or of the profit of them, she is dowable. But of commons

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of land in fee, make a lease to B. for terme of life, and after taketh a husband, and they haue issue, and she die, liuing the lessee for terme of life, the husband shall not be tenant by the curtesie.

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husband, and therefore she cannot compell him to enter: but when lands descend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall understand, that unlesse the wife be above the age of nine yeares at the time of her husbands death, she shall not be endowed by the common Law.

But it is to be knowne, that a woman may by diuers wayes estoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murder, or felonie, she shall haue in this cas no dower, notwithstanding she hath obtained her pardon. A woman shall haue no dower.

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It ought to be knowne also, of what things she may demand dower, and of what things not: Of Lands, Messuages, Aduowsons, Rent-charge, Rent-seruices, or Seignories in grosse, or otherwise of villanies, of commons certaine, of estouers certaine, of milles, and offices, or of the profit of them, she is dowable. But of commons

and estours sans number, also of annuities, of homages of things of pleasure, as of service, of patment of roses, and semblable, shee shall not be endowed.

There be yet two other kinds of dower, the one is called dowment ex assensu patris, that is to say, by the assent of the father, and the other is called dowment de la plus beale part, that is to say of the fairest part.

Dowment ex assensu patris.

Dowment ex assensu patris, is when the father is seised of lands in fee simple, and his sonne which is heire apparant, endoweth his wife at ꝑ church doze, when he is espoused, of parcel of his fathers lands, with ꝑ assent of his father in writting, testifying the same assent, if in this case her husband die, she may forthwith enter into ꝑ land so assigned vnto her without further procuremēt of proces of law, although the father of her said husband be yet aline, and in actuall possession of the land. But if she thus do, and take her to this endowment at the Church doze, she cannot haue her dower also at the Common law of the third part of all her husbands lands, or any part or parcell of them: howbeit, if she will refuse this assignmēt made vnto her at the Church doze, and demand dower at the common law, she may so do verie well. A man may also indow his wife at the time of her espousals, of his owne lands, the which he hath by his owne possession, and that dower is called dower ad ostium Eccleſiæ, that is to say, at the Church doze.

Dowment ad ostium Eccleſiæ.

Dowment de la plus beale part.

Dowment de la plus beale part, that is to say, dowment of the fairest part shall be in this case, when a man is seised of lands which he holdeth of

of another man by Knights-ſeruice, and of other lands which be of ſocage tenure, and hath iſſue, which is within the age of xxiij. yeares, and die, and the Lord of whom the lands is holden by Knights ſeruice, entreth in the land holden of him, and the mother of the child entreth into ſocage tenure, as gardaine in ſocage, if in this caſe the woman will bring a writ of dower againſt the Lord which is gardain in chiualry, he may plead the ſpecial matter, and ſhew how he is gardain in ſocage, and hath ſo much land, and thereupon pray the Court that ſhe may be ſuffered to endow her ſelfe of ſo much land, being in her own cuſtodie, as amounteth to the third part of the whole lands.

And then the iudgement ſhall be, that the gardaine in chiualrie ſhall retaine the land holden of him quit from the woman, during the nonage of the ward. After which iudgement and ſentence giuen ſhe may go, & in the preſence of her neighbours, endow her ſelfe of the beſt part of that which is in her cuſtodie, amounting to the third part of the whole, and then is ſhe called tenant in dower de la plus beale.

Finally ye ſhall vnderſtand, that by a Statute made in the xxvij. yeare of our moſt dread ſoueraigne Lord, King Henrie the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their wiues, and to the heires of the huſband, or to the huſband and wife, and the heires of their two bodies begotten, or the heires of one of their bodies, or for terme of both or one of their liues, or any other perſons and their heires, to the vſe of the Añ. 27. H. 8

husband and wife, or to the wife alone for her ioynture: in euery such case the woman shall not be suffered to demand any dowrie of the residue of her husbands lands, of whom she hath ioynture, against any tenant of the land. But in case she hath no such ioynter, then may she demand her dowrie after her course of the common law. Prouided neuertheless, that if such women be lawfully expulsed from their ioynter, or any part thereof, without fraud or couin, then shall they bee endowed of the residue of their husbands lands, for as much as the lands shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life, or likewise in ioynture (except it be by act of Parliament) and the wife ouerliue her husband, in whose time the ioynture was made, in this case the wife may refuse the lands so appointed vnto her in ioynture, and haue her dower at the common law, of such lands as her husband was seised of at any time during the couerture.

Also, if the husband committeth treason, murder, or felonie, for which he is attainted, the wife shall not haue the dower.

And note, that if the husband enter into religion, and is professed, the heire shall enter into the land, but the wife getteth no dower till the husband dieth. M 32. E. 2.

And likewise, if a man seised of land taketh a wife that is an alien borne and dieth, she shall not be endowed, except she be made denizen by act of Parliament. T. 3. H. 6. And note, that where the wife

wife bringeth a writ of dower, and recouereth her right, ſhe ſhall recouer no damma̅ges, but where her huſband died ſeiſed of the landes recouered.

A diuiſion of inheritance Chap. 10.

Damages.

HItherto haue I ſpoken of freholds, now it remaineth to treat of inheritances, not that inheritances be no free holds, for they be free holds alſo: but the other eſtates of which I haue hitherto treated, be onely free holds and of no higher nature, whereas an eſtate of inheritance, although it be a free hold indeed, yet it is not ſo to be called by name, ſith it is a far more excellent and greater eſtate. But ye ſhall vnderſtand, that of inheritances ſome be of more amplitude and excellent then other ſome be, as that inheritance which is pure ſimple, and without limitation of what heires, which kind of inheritance is called fee ſimple. But when I make a limitation of what heires, then it is called fee tayle, and of which alſo be two ſorts, as hereafter more at large ſhall be declared. Now therefore the nature of fee ſimple is ſet forth with our accuſtomed compendiouſneſſe.

Of fee ſimple. Chap. 11.

Fee ſimple.

FEe ſimple is (as I ſaid) the moſt ample and large inheritance that can be in this Realme deuiſed or inuented, it is that which a man hath to him and his heires, ſimply without any further limitation, for whether they be of his owne body begotten or not, ſo that they be the next of his kin, and within the degrees, it ſufficeth

So then tenant in fée simple is he that hath lands or tenements, whether it be by purchase or by descent, to him & to his heires and assignes for euer. For if a man will purchase lands in fée simple, he must needs haue these words his heires in his purchase, for these be the onely words that make the estate of inheritance. Therfore if lands be giuen to a man for euer, & no mention be made of his heires: he hath an estate but for terme of his life, because these words his heires do lacke.

Yet neuertheless, if a man by his testament doth deuise lands to another, in such place or case where the custome or law will serue so to doe, though he maketh no mention of heires, but saith that he bequeatheth to such a person such lands to haue and to hold to him and to his assignes for euermore, here an estate of inheritance doth passe, for in testaments the will and intent of the testatour is to be pondered, and not the formall and prescript words of the law.

Also these termes in the law, frank mariage, & frank almoign, that is to say, frée mariage & frée almes, do include in them words of inheritance.

And therefore if I giue lands to a man with my daughter in franke mariage without further addition or mention of heires, this is an estate of inheritance, as shall be hereafter declared more plentiously. So likewise it is of lands giuen to an house Ecclesiasticall in pure and frank almes. Moreouer if land be giuen to a man and to his blood, or vnto him and to his séed, he hath in both cases an estate of inheritance, for in the last he hath a fée taple, and in the other a fée simple. For this word séed, and blood, and such like do imply

words

words of inheritance.

Also if landes bee giuen to a man and to his heires males, or females, hee hath by his gift a fee simple, because it is not expressed of what body the issue shall come.

But now it is to be seene who be said a mans heires in the law: ye shall therfore know that my brother or sister by the halfe blood, that is to wit by the fathers side, and not by the mothers, or contrariwise by the mothers side, and not by the fathers, shall neuer bee mine heire, nor none that come of them. Neither my bastard can be mine heire, nor mine owne naturall father nor mother, nor grandfather, nor grandmother can bee mine heire. For it is a principall and ground of the law that inheritance may lineally descend, but ascend it may not. And therefore if I haue landes in fee simple, & die without issue of my body, my father cannot be mine heire, but my fathers brother or sister shall, and then if my vncle or aunt die seised without issue, my father shall haue the landes as heire to mine vncle, and not as heire to me, for that cannot be. But it may goe from me to mine vncle or aunt well enough, for that is not called a lineall ascension, but a collaterall descent

The halfe blood.

A bastard shall be no heire

A ground of the law.

Also you shall vnderstand, that a lineall descent is, when the descent is conueyed in the same line of the whole blood: as grandfather, father, & sonne, and so downe. And collaterall descent is of another branch, from aboue of the whole blood, as the grandfathers brother, or fathers brother, and so descending.

Lineall and collaterall descent.

And yet shall note, that by the common law of this Realme, the eldest sonne shall haue the whole

inheritance, and after him if he haue no issue, the second son, and so forth. And if I haue no sonnes but daughters, then shall all the daughters together inherit, which be called coparceners: but if I haue no issue at all, neither sons, ne daughters, then shall my eldest brother in heritage succeede me: but if I haue no brother, then my sisters if I haue any, if not, my vncle by my fathers side, if the lands be of mine owne purchase, or if they discended vnto me from my father. And to bee short, if there bee none in life of my fathers side, the purchased lands shall goe to my mothers side, and if there can be found no heire neither by my fathers side, nor yet by my mothers, then shall it escheat, as they call it, to the Lord of whom it was holden, for euery land must needs bee holden of some Lord, as shall be hereafter shewed. But if lands descend vnto me by my mothers side, then if I faile of issue, the lands shall discend onely to my heires of my mothers side, & neuer to mine heires of my fathers side, as on the contrary side, if I haue lands, or any tenements by discent from my father, or his blood, they shall neuer descend to my heires by my mothers side.

Copartners

Escheat.

Diuersitie.

And thus yee see a great difference in this behalfe, betweene purchased landes, and landes which descend from an ancestor.

A ground of the law.

If there be three sonnes, and the middle sonne purchase landes and die without issue, the eldest shall haue the lands, and not the youngest.

Also it is a principle in our law, that none can be mine heire of lands that I holde in fee simple, vnlesse he be mine heire by the whole blood, that is to say, both by father and mother, for if a man hath

hath issue, two or three sons by sundry wiues, and the eldest purchaseth lands in fee and dieth without issue; his halfe brethren, I meane those that be not his brethren both by the fathers side, and mothers side, shall not haue the land, but it shall goe to his vncle. Likewise if a man hath by his first wife a son, and a daughter, and by his second wife another sonne, and the sonne by the first wife purchaseth lands in fee simple, and dieth without issue; the sister germain, that is to say, both by fathers side and mothers, shall haue the lands by descent as heire to her brother, and not the younger brother, forasmuch as the younger brother cannot in this case bee heire to his elder brother, because he is no brother germain vnto him. Otherwise it is of lands or other hereditaments intailed, as shall be hereafter specified.

Also if a man bee seised of lands in fee simple and hath issue a son and a daughter by one wife, and after the death of his first wife, a son by another wife, and dyeth, and the eldest son entreth into the lands, and after hee dyeth without lawfull issue of his body, the daughter shall haue the lands and not the youngest son, and yet the youngest son is heire to his father, but hee is not so vnto his brother. But if in this case the eldest sonne had not entred after the death of his father, but had dyed before any entrie made by him, then shall not the sister germain enter, but the younger brother is heire to his father, because the eldest brother was neuer in actuall possession, which is requisite to the person that claimeth to be heire collaterally.

But to the lineall heires, it sufficeth that the ance

ancestour should haue beene heire, if he had liued I meane as thus: A man seised of lands and hath issue a son and a daughter by one wife, and afterward a sonne by another, he dieth, and after his death the eldest sonne entreth not, but dyeth without issue before he can make actuall entrie, here in this case his sister shal not haue the lands as heire to her brother, because her brother was not in actuall possession, but the younger brother shall haue them, as heire to his father: yet if the eldest son in that case had left behind him issue of his body, whether it had beene sonne or daughter, this issue notwithstanding that the father of the issue was neuer possessed either actually or in the law, shall haue the lands, and shal conuey his descent from his father: The cause hereof is this, that the son or daughter is lineall heire, whereas the brother, sister, vncle, aunt, &c. be heires collaterall, and so ye shall obserue a diuersitie.

Diuersitie.

I call an actuall possession, when a man entreth indeede into lands, which be to him descended, but a possession in law is called when landes be descended to a person, & he hath not yet really & actually entred into them. For notwithstanding that he is not in actuall possession, yet he is possessed in the law, that is to say, in the eye and consideration of the law he is deemed to bee possessed, for so much as he is tenant for euery mans action that will sue for the said lands, or else assuredly there should ensue an intollerable inconuenience, as we shall more copiously open in another place.

Hæreditas quid sit.

Ye shall furthermore vnderstand, that this word Inheritance, is not onely to be accommodate and applied to that which commeth by descent or succes-

sion,

ession from a mans ancestors or predecessors, but also to every purchase in fee simple or fee tayle

And note, that a man can haue no larger or greater estate then fee simple.

Of fee tayle. Chap. 12.

WE shall vnderstand, that before a certaine Statute called the Statute of West, second there was an estate tayle, but al was fee simple, either purely, that is to say without condition or at the least way conditionally as appeareth by the preamble of the said estatute, but now sithence the promulgation of the estatute, diuers formes of estates tayle haue risen. Westm. 2. Chap. 2. Diuision.

Fee tayle is, when it is prescribed and limited in the gift what sort of heires, and by whom engendred, shall inherit:

As for example, I giue lands to a man and to his heires, and go no further, this is a fee simple: but if I make a limitation, and ad of his body begotten, now it is a fee tayle, that is to say, a fee or inheritance limited, prescribed, determinate or assigned.

So that if I giue lands to a man and to his heires, he hath fee simple, but if I giue lands to him and to his heires of his body lawfully begotten, he hath but a fee tayle, forasmuch as I appoint, limit, prescribe, & expresse what heires they shall be, & for lacke of such heires the gift shall be expired and worne out, and the lands shall be reuerted againe to the giuer or his heires.

But ye must obserue and note, that there be two kindes of fee tayle. There is a generall tayle,

tayle, and there is a ſpeciall taile.

Fée tayle generall is, where lands be giuen to a man and to his heires of his body begotten, without any mentioning and expreſſing by what woman they are begotten.

Generall tayle.

And therefore if a man be tenant in the generall tayle of lands, and taketh a wife and hath iſſue by her, and ſhe dieth, and afterward he taketh another wife, of whom he hath alſo other iſſue by her, either of theſe iſſues is inheritable to this land intailed. But if I expreſſe in the gift by what woman the heires ſhall be procreated and ingendred, then it is an eſpeciall tayle: as for example, to make the thing plaine, if lands be giuen to a man and to his heires of his body lawfully begotten by Margaret his wife, this is an eſpeciall taile, for the iſſue of him begotten by another woman, ſhall neuer inherit by force and vertue of the tayle. Likewiſe it is if lands be giuen to a woman and to the heires of her body lawfully begotten (and ſhew not by what man) this is a generall tayle, but if I go forward & ſay by ſuch a man her husband, then it is an eſpeciall tayle.

Eſpeciall tayle.

Alſo if I giue lands to a man and to his wife, and to the heires of their two bodies lawfully begotten: this is an eſpeciall tayle, as well in the husband as in the wife.

Franke mariage.

Semblable it is, if a man giueth lands to another man with his daughter, or kinſwoman in franke mariage, this word (franke mariage) implieth an eſtate taile eſpeciall, and in this caſe as well the man as the woman hath an eſtate in the ſpeciall tayle.

But if I giue lands to a man & to ſuch a woman.

man, and to his heires that he hath begot of her, here the woman hath an estate but for terme of her life, and the husband an estate in the speciall tayle. And likewise it is in the womans behalfe: as if I giue lands to a man and to his wife, and to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the speciall taile. But in both cases, if I had said to the heires, & not to his or her heires, then should either of them haue had an estate in the speciall tayle, because this word heirs is as well referred to the one, as to the other.

Descent by heire males

Ye shall also vnderstand, that if lands be giuen to a man, and to the heirs males of his body, this is an estate taile, and in this case, the heire female shall neuer inherit.

Also, if a man hath issue and dieth, and landes be giuen to him and to his heires of his body begotten, this is a good estate taile, although the father were dead at the time of the gift. Finally, it is to be noted, that of lands which a man hath in fee simple, the possession of the brother, shall cause the sister germaine: that is to say, the sister both by the fathers side and mothers to inherit: and in this case, the brother by the halfe bloud shall not inherit, as heretofore was said: but of lands which be intailed, otherwise it is. Therefore, if a man be seised of lands in the generall tayle, and hath issue by his first wife a sonne and a daughter; and also a sonne afterward by another wife, and dyeth, and the eldest sonne entreth into the lands, and after dyeth, the sister germaine to the eldest sonne shall not haue the lands, but the ponger brother of the halfe bloud, because whosoeuer

shall

shall inherit land or any other hereditaments in tayle, must claime them as next and immediate heire not to him that dieth last seised of the lands, but to him to whom the lands were first giuen vnto whom in the case before remembred, is the sonne heire, and not the daughter.

Diuersitie. Thus yee shall marke a great diuersitie betweene the forme of succession in the lands of fee simple, and the forme in fee tayle.

Tenant after possibilitie of issue extinct Chap. 13.

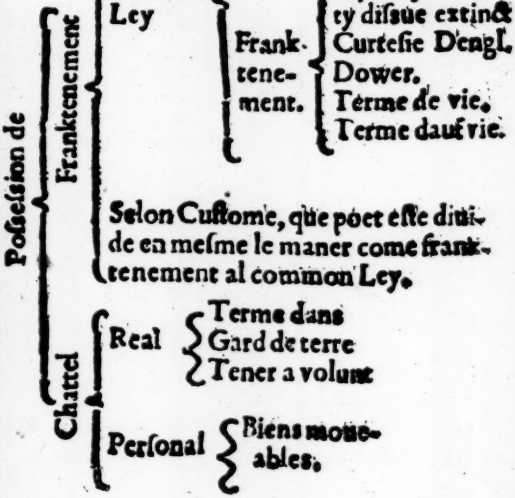
When lands, tenements, or other hereditaments, be giuen to a man and to his wife, and to the heirs of their two bodies lawfully begotten, if in this case either of them chance to die before they haue issue betweene them, he or she that ouerliueth, is still tenant in tayle, but without possibilitie of any issue that can be heire to these lands or hereditaments thus intayled, & for this cause he or she thus ouerliuing, is called tenant in taile after possibility of issue extinct, for in such a tenant is all possibility of issue that may be inheritable to these lands by force of the gift in taile vtterly extinct or quenched, and by this or her death the estate taile shall expire, cease, & be abolished for euer, and shall reuert & turne againe to the giuer or donour from whence it came.

Dispunishable of waste. Yet forasmuch as the tenant after possibilitie of issue, had once an inheritence in him, he shall not be punished by an action of waste, though he maketh neuer so much waste in the lands and tenements, whereas yet in effect he is but a tenant for [illegible] of life. But if this tenant doth alien, the

fee, such lands, he in the reuertion may enter for the forfeiture. Forfeiture.

And thus for estates at this present time shall suffice. But to the intent that ye may the more easily comprehend all the members of the diuision of possessions and estats which men may haue in lands, tenements, and other hereditaments, it shall not be euill done to set forth as it were in a table before your eyes the diuision thereof, which is this.

A figure of the diuision of Possessions.



Of

Of Parceners or other Coheires. Chap. 14.

HItherunto I haue made a compendious & short declaration of estates of all sortes: But where I said, that among sisters there is no prerogatiue or preheminence concerning the inheriting of their ancestours lands, but that they shall be altogether inheritours, and make as it were but one heire; it is expedient to make a further declaration and proces in this behalfe, and to shew how, and in what manner this partition shall be made.

Diuision of Parceners at the common Law, and Parceners by custome.

But ye shall vnderstand, that there be besides Parceners at the common Law, which be only sisters, also Parceners by custome which is amongst brothers, contrarie to the course of the Common law; and this custome is in some places of Kent, and in other places where lands and tenements be of the tenure of Gauelkind.

Writ de Partitione facienda.

Yee shall therefore know, that when a man is seised of land in fee simple, or fee taile, and hath no issue but daughters, and die, and the daughters doe enter into the landes thus descended vnto them, now they be called Parceners or coheires, & by a writ called De partitione facienda, brought by one of them against the others, they shall be constrained by the law to suffer an egall partition to be made of the lands betweene them.

Partition in diuerse manners.

Now partition may be made in sundry waies. One way is, when they themselues do make partition betweene them of the whole heritage, and do agree vnto the same, and do enter euery one into her part so allotted vnto her.

Another way is, when by all their agreement and consent, one common friend doth make the partition.

partition. In which case the eldest sister shal haue the first election, and after her the second sister, & so forth. But if they agree that the eldest sister shall make the partition, and she maketh it, then the eldest shall not chuse first, but shall suffer all her sisters to chuse before her, as it is thought.

There is also another forme of partition, which is, equally to diuide the lands into so many parts as there be coheires or parceners and to write euery part so diuided in a seuerall scroule of paper, & so put the said scroules in a bonet, or to inclose them seuerally in bals of waxe, and the eldest sister to chuse which ball she will, or to put her hand into the bonet, and to take a scroule, and to hold her to her chance and allotment, and so consequently euery sister after other.

And ye shall note, that partition by agreement may alwell be made by nude and bare words without writing as by writing. Nota.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called De partitione facienda, against them that refuse partition, to compell the same to suffer partition to be made accordingly, and then by iudgement of the Court, the shirife by the serement and oath of twelue men, shall make partition betweene them, and shall assigne to each sister her portion, as he shall thinke good, without giuing any election or choise to the eldest. A writ de partitione facienda.

And if two manours or meases happen to descend to two sisters, and the manours be not of egall value, then may she, to whom the lesse manour or mease is allotted, haue assigned vnto her

a rent proportionably out of the other manour, for the which rent shee and her heires may di-
Distresse of common right. strayne of common right, though they haue no writing thereof.

Finally, ye shall vnderstand, that if a man be seised of lands in fee simple, and hath issue two daughters, and giueth with one of his daughters to another man that shall marry her, the third or fourth part of his land in frank marriage, and dieth, if in this case ỹ daughter that is in this wise bestowed and aduanced, will haue her portion of her fathers heritage, she must part her land giuen
Hochpot. vnto her in franke marriage in Hochpot new againe. I meane she must be contented to suffer her said lands to be commixed and mingled with the other lands of which her father died seised in fee simple, so that an equall diuision may be made of the whole, or else, she shall haue no part of those lands of which her father died seised. But if her father had made vnto her a common gift in taile, or feoffement in fee, she should not need to put her lands in Hochpot, but may very well keepe and retaine them still, and also haue as good part of the rest of the lands of which her father died seised, as her other sister or sisters haue. For a gift
Frank marriage. in frank marriage, is accounted the most free and most liberall gift that can be, and that gift which the law iudgeth to be onely for the aduancement and bestowing of the daughter, whereas feoffements in fee simple, and also common gifts in taile be accustomably for other causes, and for the aduantage rather of the giuer or feoffour, then of the taker.

Also if parceners make partition of lands be-

ing

ing within age, that partition is void.

And if parceners in fee simple make partition, and the port of the one is better then the other, being of full age of xxj. yeares, then the partition is good and cannot be defeated: but if it be of lands in fee taile, the one part being better then the other, the partition may be defeated by their heires.

Of Ioyntenants Chap. 15.

HItherunto verely haue we spoken of Coheires, called parceners at the common law, which as is heretofore declared, do come to lands and other hereditaments joyntly by the course, operation and act of the law. Now shall we speake somewhat of them which either joyntly or severally come to lands, tenements, or other hereditaments by their owne purchase, act, procurement and working. And of these, they that come to them by joynt title, way, or colour, be called iointenants, but they that come by severall tytles, waies, or colours, to lands or tenements be named tenants in common. Tenant in common.

So then, if a man being seised of lands or tenements, or other hereditaments, shall thereof infeoffe two, three, foure, or more, to haue and to hold to them in fee simple, fee taile, or for terme of their lives, or for terme of anothers life, these persons so infeoffed and seised, be called Ioyntenants. Also if two or moe do expell and disseise another man of any lands or tenements to their owne behoue and vse, these Disseisours and wrong doers are now become Ioyntenants,

because by their owen act they come iointly to this land. But if they do disseise another man to the vse onely of one of them, in this case they be not iointenants: but he to whose vse the disseisin is made, is tenant alone of the same, and the others haue nothing in the tenancie, but be called aydors or coadiutors to the disseisin.

Disseisin. And ye shall vnderstand, that a disseisin is properly, where a man entreth into any lands or tenements there where his entrie is not lawfull, and putteth out him which hath the frée-hold of the same.

Suruiuor taketh place. And ye shall furthermore know, that the nature of iointenancie is, that he which suruiueth & ouerliueth the other, shall haue to himselfe alone the whole and entire tenancie, according to that estate which he should haue had if the iointure had béene continued: as for example, three ioyntenants be of lands in fée simple, & the one hath issue and dieth, in this case the two which do ouerliue their fellow, shall haue the whole lands betweene them, & the issue of him that is departed getteth nothing. And if the second iointenant hath also issue and die, the third which hath ouerliued them both, shall now haue and enioy the whole, to him and to his heires for euermore.

Diuersitie. But otherwise it is of coheires which in our law are called parceners. For if there be three such coheires & parceners, & before any partition made, the one haue issue a son or a daughter and dieth, her portion shal descend and fal to her child and shall not run amongst the other ioint heires or coparceners. Howbeit if such parcener or coheire had died without issue, then should his portion

portion haue descended to his coheirs. But how? not by force of suruiuour or ouerliuing, which in latine is called Ius accrescendi, but by verie descent: for where any of the coheires die without issue, who can be heire to him or her so dying, but the other coheires to him or her so dying, or the rest of the coheires if there be many?

And like as this right of suruiuour or ouerliuing, holdeth place amongst iointenants of lands and tenements, so in like manner it holdeth place amongst them which haue ioint estate or possession with others of chattels, whether they be reall or personall. As (for example) if a lease of lands or tenements be made to many for terme of certaine yeares, the ouerliuer or ouerliuers, shall haue the whole during the terme by force of the same lease. So of chattels personall, if an Horse, Oxe, Graine, or other such personall chattell be giuen to many, he which ouerliueth shall haue the same alone. In semblable wise it is of debts and duties. For if an obligation be made to many for one debt, and of some other couenants and contracts, the law is likewise so.

Iointenants of reall and personall goods.

Also some iointenants may be which may haue ioint estate and be toyntenants for terme of their liues, and yet haue seuerall inheritances.

As where lands be giuen to two men and to the heires of their two bodies ingendred, in this case, these two persons haue toynt estate for terme of their two liues. And yet they haue seuerall inheritances. For if the one haue issue and die, the other that suruiueth shall haue all by force of the suruiuour for terme of his life. And he he that suruiueth hath also issue and die, then

Iointenants of seuerall inheritances.

the issue of the one shal haue the halfe of the lands and the issue of the other shal haue the other halfe and they shall not be ioyntenants, but tenants in common: and the cause and reason why such doners in such cases haue a ioint estate for terme of their liues, is for that at the beginning the lands were giuen to them two, which words without more saying, make a ioynt estate to them for terme of their liues: for if a man will let land to another by deede or without deede, not making mention what estate he hath, and of this maketh liuerie of seisin, in this case the lessee shall haue an estate for terme of his life. And if he haue no liuerie of seisin, he is tenant at will. And so forasmuch as the lands were giuen vnto them, they haue a ioynt estate for terme of their liues. But the cause why they haue seuerall inheritance is this, for that they cannot by possibility haue an heire betweene them ingendred, as a man and woman may haue: wherefore the law will that their estate and their inheritance shall be such as reason will, after the forme and effect of the words of the gift, and that is to the heires that the one ingendreth of his body, by any of his wiues, and to the heires that the other ingendreth of his bodie by any of his wiues. So it behoueth by necessitie of reason, that they haue seuerall inheritances. And in such case if the issue of one of them after the death of them both, doth die, so that he hath no issue aliue of his body ingendred, then the donor which gaue the land, or his heires, may enter in the halfe as in his reuersion, though the other hath issue. And the cause is, that forasmuch as the inheritances

Tenants in common

be seuerall, therefore the reuersion in the law is seuered, and the suruiuour of the issue of the other shall hold no place to haue the whole. And as it is said of males, in the same manner it is where lands be giuen to two females, and to the heires of their two bodies begotten.

Suruiuor holdeth no place

Also if lands be giuen to two, and to the heirs of one of them, this is a good iointenancie, and the one hath a free hold, and the other a fee simple, and if he which haue simple die, he that hath the freehold shall haue the whole by the suruiuour for terme of his life.

And if these two iointenants ioyne in a gift in the taile to a stranger, reseruing a rent to him that hath an estate but for his life, this reseruation is voide to make a tenure. Likewise it is where tenements be giuen to two and the heyres of the body of one of them engendred, the one hath a free hold, and the other a fee taile.

Renr charg granted by a Iointenãt

Note, if two iointenants be seised of an estate of fee simple, and the one granteth a rent charge by his deede to another, out of the which to him belongeth, in this case during the life of the grantour, the rent charge is good and effectuall, but after his decease, the rent charge is voide, as to charge the lands, for he that hath the land by the suruiuor, shal hold all the land discharged: the cause is, for that he which suruiueth, claimeth to haue ℔ land by the suruiuor, and not by discent of his fellow But otherwise it is of parceners, or coheirs for if there be two parceners in fee simple, and before any partition be made, the one chargeth that that to him belongeth by his deed of a rent charge

Diuersitie.

and dieth without issue, here that which to him belongh, descendeth to the other parcener, and in this case the other parcener shall hold the land charged, because he commeth to the halfe by descent as heire.

Deuise by testament.

Also if there be two ioyntenants in fee simple within one borough where the lands and tenements within the same borough bee deuisable by testament, if the one of the said iointenants deuise that which to him belongeth by testament, and die, this deuise and legation is void. And the cause is, for that no deuise may take effect till after the death of the testator which bequethed and deuised the same, and by his death all the land incontinent commeth by the law to his fellow that suruiueth, by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the suruiuor after the course of the law, and for this cause such a deuise is voyd.

A ground of the law.

But otherwise it is of parceners seised of tenements, deuisable in such case of deuise, for the cause aboue remembred. And it is commonly said, that euery iointenant is seised of the land which he holdeth ioyntly per my, & per tout, that is, throughout and by all: And this is as much to say, that he is seised by euery parcell and by all: which saying is true, for in euery parcell and part, and throughout all the lands & tenements he is ioyntly seised with his fellow.

Diuersitie.

And therefore if the one iointenant make a feoffmēt to his companion, that is void, because he can make no liuerie of seisin to him.

Also if two ioyntenants bee seised of certaine lands in fee simple, and the one letteth that to him

him belongeth to a ſtranger for terme of xl. yeres and dieth within the terme, in this caſe after his death the leſſee may enter and occupie the halfe to him letten during the ſaid terme, though the leſſee neuer had poſſeſſion of it in the life of the leſſor by force of the leaſe: And the difference betweene the caſe of the grand of a rent charge, and this caſe is this, that in the grant of a rent charge by a iointenant, the landes or tenements abide alway as they were afore, without that, that any hath right to haue parcell of the tenements but themſelues, and the tenements abide in ſuch plite as they were before the charge. But where a leaſe is made by a iointenant to another for terme of yeares, incontinent by force of the leaſe, the leſſee hath right in the ſame land, that is to ſay, of all that, that to his leſſor belongeth, by force of the ſame leaſe, during his terme. And if the leſſor in this caſe die, the other iointenant ſhall haue the rent or farme during the ſaid terme, becauſe the reuerſion is come to him by ſurumour. Finally, if a ioynt eſtate be made of land to the huſband and wife, and to a third perſon, in this caſe the huſband and the wife haue not in the law in their right but the halfe, and the third perſon ſhall haue as much as the huſband and the wife haue, that is to ſay, the other halfe. And the cauſe is, for that the huſband and wife be but as one perſon in the eye of the law. And it is here in like caſe as if an eſtate be made to 2 iointenants, where the one hath by force of the ioynture the one halfe, and the other the other halfe. In ſemblable wiſe it is when an eſtate is made to the huſband and wife, and to other two men, in this caſe the huſband and

Diuerſitie, betweene a graunt of a rent and leaſe.

and the wife haue not, but the third part, and the other two men the other two parts.

Also if two or three together disseise another of lands and tenements to their own vse, then such disseisors be called ioyntenants.

More shall be said of this matter touching ioyntenants in the next chapter.

Tenants in common. Chap. 16.

TEnants in common (as I said before) be they that haue landes or tenements in fee simple, fee taple, or for terme of life, which haue such lands and tenements by seuerall titles, and not by one ioynt title, and none of them knoweth that which is seuerall to him. And in this case they ought by the law, before partition made betweene them, to occupie such lands and tenements in common, and vndiuided, and to take the profits in common. And because they come to such landes and tenements by seuerall titles, and not by one selfe ioynt title, and their occupation, and possession in the same, is among them in common, they be called tenants in common, or tenants pro indiviso. As for example, if a man infeoffe two ioyntenants in fee simple, and the one of them alieneth that that to him belongeth, to another in fee, now the other ioyntenant, and he to whom the alienation was made, be tenaunts in common, for that they be seised of such tenements by seuerall titles: for the one commeth to the one halfe by the feoffement of the ioyntenant, and the other hath the other halfe by force of the first feoffement made to him and to his first fellow: and so they be in by seuerall

seuerall titles, and by seuerall feoffements.

And it is to wit, that when it is said in any booke that a man is seised in fee without more saying or addition, it shall be understood fee simple: for it shall not be understood by such a word in fee that a man is seised of fee taile, except there be put in it such addition in taile. Diffinition of fee only.

Also if three iointenants be, and the one of them alieneth that which vnto him belongeth to an other in fee, in this case the alienee is tenant in common with the other two iointenants. But yet the other two iointenants be seised of the two parts iointly: and of these two parts the survivour betweene them holdeth place. Iointenãts.

Also if there be two iointenants in fee, and the one giueth that, that vnto him belongeth to another in the taple, the donee and the other iopntenant be tenants in common. But if the lands be giuen to two men, and to the heires of their two bodies engendred, the donees haue a iopnt estate for terme of their liues: and if each of them haue issue and die, their issues shall hold in common.

Also if lands be giuen to two men to haue and to hold the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common.

Also if a man seised of certaine lands enfeoffeth another in the halfe of the same land without any speech of assignement or limitation of the same halfe in seueralty at the time of the feoffement, then the feoffee and the feoffour shall hold their parts of the land in common.

And as it is of tenants in common of land or tenements in fee simple, and fee taile, euen so it

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is of tenant for terme of life. Therefore if two
Iointenants iointenants be in fee, and the one letteth to a man that, that vnto him belongeth for terme of life, and the other iointenant letteth that which to him belongeth, to another for terme of life also, these two lessées be tenants in common for terme of their liues. Also if a man let lands to two men for terme of life, and one of them granteth all his estate to another, then that other tenant for terme of life, and he to whom the grant is made, shall be tenants in common during the time that both the lessées be alive.

Note, if there be two iointenants in fee, and that one letteth that, that vnto him belongeth, to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, be tenants in common. And vpon this
Question. case a question may rise, as thus. Let the case be that the lessour hath issue & dieth, liuing the other iointenant his fellow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall descend to the issue of the lessor, or whether the other iointenant shall haue it by the survivour or no. And some haue said that the other ioyntenant shall haue the reuersion by the survivour, for as much as when the ioyntenants were ioyntly seised in fee simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though he hath severed the franktenement of that that to him belongeth by the leale, yet he hath not severed the fee simple.

But the fee simple abideth to them iointly as it was before. And so it seemeth vnto them, that

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the other ioynt tenant which ſuruiueth ſhall haue the reuerſion by the ſuruiuour. But other haue thought the contrarie, and this is their reaſon: when one of the ioyntenants letteth that which vnto him belongeth to another for terme of life, by ſuch leaſe the franktenement is ſeuered from the ioinʒture. So that the reuerſion that is dependant vpon the ſame franktenement is ſeuered from the ioinʒture. Furthermore, if the leſſor had reſerued to him a yearly rent vpon the leaſe, the leſſor only ſhould haue the rent, which is a proofe that the reuerſion is onely in him, and that the other hath nothing therein.

Also if the tenant for terme of life were impleded, & maketh default after default, the leſſor ſhal be onely hereupon receiued to defend his right, and not his fellow, which proueth the reuerſion of the halfe to be onely in the leſſor, and ſo conſequently, if the leſſor die, liuing the leſſee for terme of life, the reuerſion ſhall deſcend to the heires of the leſſour, and ſhall not come to the other ioyntenant by the ſuruiuour after theſe mens opinions, yet it is doubtfull. But in this caſe if the ioyntenant that hath the franktenement, haue iſſue and die, liuing the leſſour and the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of fee by deſcent, foraſmuch as the franktenement may not by nature of the ioinʒture be annexed to a reuerſion: and it is certaine that he that made the leaſe was ſeiſed of the halfe in his demeſne as of fee, and that none ſhall haue any ioinʒture in his franktenement. So that this ſhall deſcend to his iſſue. Reſceit. Quære.

If three ioyntenants be, and the one releaſeth by

by his deed to one of his fellowes, all the right he hath in the land, then hath he to whom the release is made, the third part of the lands by force of the release, and he and his fellow shall hold the other two parts iointly. And as to the third part that he hath by force of the release, he holdeth it with himselfe and his fellow in common.

Release. And it is to wit, that sometime a deed of release shall take effect to put the estate of him that made the release, in him to whom the release is made: as in the case aforesaid.

Also if a iopnt estate be made to the husband and wife and to the third person, and the third person releaseth his right that he hath to the husband: then hath the husband the halfe which the third person had, & the wife of this hath nothing Semblably, if the third person had released to the wife not naming the husband in the release, then should the wife haue the halfe that the third person had, and the husband nothing of this but in the right of his wife, because such release shall inure to put the estate in him to whom it was made, of all that that belongeth to him that made the release Againe in some cases release shall enure and serue to put all the right that a man hath that made the release in him to whom it is made. As a man being seised of certaine lands is disseised by two disseisors, if the person disseised by his deede release all his right to one of the disseisors, then he to whom the release is made shall haue and hold all to him alone, and put out his fellow out of the occupation of it. And the cause is, for that the two disseisors were seised by wrong by them done against the law, and when one of them

Diuersitie.

gets

gets the releaſe of him that had right to enter, his right reſteth in him to whom the releaſe is made, and in ſuch plight as if he that had the right had entred and infeoffed him of the ſame. And the cauſe is, for that he that had before an eſtate by wrong, hath now by the releaſe a rightfull eſtate.

Releaſe by way of extinguiſhment.

And in ſome caſe a releaſe ſhall inure and take effect by way of extinguiſhment, & ſuch a releaſe ſhall helpe the tenant to whom the releaſe was not made, aſwel as him to whom it is made: as if a man be diſſeiſed, and the diſſeiſor maketh a feoffement to two men in fee, if the perſon diſſeiſed releaſe to one of the feoffes in fee by his deed, then ſuch a releaſe ſhall inure to both the feoffées, becauſe the feoffées haue their eſtate by the law, that is to ſay, by the feoffement, and not by wrong done to any other.

A releaſe ſhall inure to him in the remainder.

And in like manner, if the diſſeiſour make a leaſe to a man for terme of life, the remainder over to another in fee, if the diſſeiſée will releaſe to the tenant for terme of life all his right, this releaſe ſerueth as well to him in the remainder as the tenant for terme of life. And the cauſe is, for that the tenant for terme of life commeth to his eſtate by the courſe of the law, and for this cauſe the releaſe ſhall inure and take effect by way of extinguiſhment of the right of him that hath releaſed. And by this releaſe the tenant for terme of life hath no greater eſtate then hee had before the releaſe made vnto him, and yet the right of him that releaſed is all vtterly extinct and gone. Wherefore foraſmuch as ſuch a releaſe cannot inlarge the eſtate of the tenant for

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terme of life, it is reason, that it shall serue him in the remainder.

Also, if there be two parceners, and the one alieneth his part to another, the other parcener and the alienée be tenants in common.

Tenants in common by title of prescription.

Furthermore, tenants in common may be by title of prescription, if that one & his ancestours or they whose estate he hath in the halfe, haue holden in common the same halfe with the other tenant that hath the other halfe, and with his ancestors, or them whose estate he hath as vndiuided, time out of mind. And ye shall marke, that in some case tenants in common ought to haue of their possession seuerall actions, and in some case they shall ioyne in one action: for if there be two tenants in common & they be disseised, they ought to haue against the disseisor two assises, and not one assise. For euery of them ought to haue an assise of his halfe, because they were seised by seuerall titles. But otherwise it is of Iointenants: for if there be xx. iointenants, and they be disseised, they shall haue in all their names but one assise, because they haue but one ioynt title.

Actions seuerall.

Assise.

Assise.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseised of the whole, in this case they shall haue in both their names one assise of the two parts: And as to the third part, he to whom the release was made, ought to haue thereof an assise in his owne name, because as to the third part he is tenant in common.

Diuersitie.

Also as to sue actions that touch the realtie, there is a diuersitie betweene parceners that are

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in by diuers discents, and tenants in common: For if a man seised of certaine lands in fee, hath issue two daughters, and die, and they enter into the landes as coheires, and each of them haue issue a sonne, and die without partition made betweene them, so that the one halfe discendeth to the sonne of the one parcener, and the other half to the sonne of the other, and they enter and occupie in common, and be disseised, in this case they shall haue in their two names one assise, and not two assises. And the cause is, though they come in by diuers discents, yet they be coheires and parceners. And if two tenants in common of certaine lands in fee, giue the same to another man in the taple, or let it to another for terme of life, yeelding an annuitie, or certaine rent, or a pound of pepper, or an hauke or an horse, and they be seised of these seruices, and afterward all the rent is behind, and they distreine for it, and the tenant maketh rescous, in this case as to the rent and the pound of pepper, they shall haue two assises, and as to the hauke, and the horse but one assise. And the cause why they haue two Assises, as to the rent and pound of pepper is, for that they were tenants in common by seuerall titles: and when they made a gift in the taile, or lease for terme of life, sauing & reseruing to them the reuersion and yeelding to them certaine rent, this reseruation is incident to their reuersion. And because their reuersion is in common and by seuerall titles, euen as their possession was before the rent and other things which may be seuered, and which were to them reserued vpon the gift, or vpon the lease which be incident by ꝑ same to the reuersion

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Plaint in assise.

therefore such things so severed be of the nature of the reuersion. Wherefore it behoueth that the rent and the pound of pepper which may be severed to be then in common by severall titles. And of this they shall haue two assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper. But of the hauke, and the horse, which cannot be severed, they shall haue but one assise, for it were an absurditie and a thing inconuenient to make a plaint in assise of the halfe of an hauke, or of the halfe of an horse. In like manner it is of the other rents and seruices that tenants in common haue in ground by diuers titles.

Personall action.

And ye shall vnderstand, that concerning actions personall, tenants in common ought to haue them ioyntly in all their names, that is to say, of trespasse, or offences that touch their tenements in common, as of breaking of their houses, breaking of their closes, and pastures, wasting and defoaling of their grasse, cutting of their woodes, and of filling in their ponds, and such other, and they shall recouer ioyntly damages, because the action is in the personaltie and not in the realtie.

Damages.

Tenants in common shall haue one action of debt.

Also if tenants in common make a lease of their tenements to another for terme of yeres, yelding vnto them yearely a certaine rent, if the rent be behind, they shall haue one action of debt against the lessee, and not diuers actions, because the action is in the personaltie. But in an auowrie for the said rent, they ought to be severed, because it is in the realtie, as be assises.

Of

Of Chattels. Chap. 17.

IT is to be knowne, that as there be tenants in common of lands or tenements: so there be tenants in common of possessions and propertie of chattels, aswell reall as personall. Of reall, as if a leale be made of certaine lands to two men for terme of twentie yeares, and when they be thereof possessed, the one granteth that, that vnto him belongeth, during the terme to another, he to whom the grant is made, and the other shall hold and occupie in common.

Also if two iointenants haue the ward of the body and of the lands of an heire within age, and the one of them granteth to another that, that vnto him belongeth of the same ward, then he to whom the graunt is made, and the other that granteth not, shall haue and hold it in common. Iointenant of a ward.

Of chattels personals: as if two haue a ioynt estate, either by gift, or by buying of an Horse, or of an Ore, or such like, and the one of them granteth that, that to him belongeth, here shall the grantee, and he that granteth not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personals in common, and by diuers titles, if one of them die, the other that suruiueth shall not haue his fellowes part by the suruiuour but the executors of him that dieth shall hold and occupie it with him that suruiueth, in like forme as their testatour did, or ought in his life, forasmuch as their titles and rights were seuerall. Also in the case aforesaid, if two haue an estate in common for terme of yeares, and the one doth

occupie all and put the other out of his poſſeſſion and occupation, then ſhall he that is put out haue againſt the other a writ de Eiectione firmæ for the halfe. In ſemblable manner where two hold the ward of lands or tenements during the nonage of a child, if one ſhal put out the other of his poſſeſſion, he that is out ſhall haue a writ de Eiectione cuſtodiæ of the halfe, becauſe theſe things be chattels reals and may be apportioned and ſeuered. But no action of treſpas lieth for one againſt the other (as for example. Quare clauſum fregit & herbam ſuam conculcauit & conſumpſit, nor ſuch like actions) foraſmuch as each of them may enter and occupie in common. But if two be poſſeſſed of chattels perſonals in common by diuers titles, as of an horſe, an oxe, or a cow, if the one take it all to himſelfe out of the poſſeſſion of the other, the other hath none other remedie, but to take it againe from him that hath done him the wrong, when he may ſee his time.

A writ de Eiectione firmæ.

De Eiectione cuſtodiæ

In like manner of chattels reals, which may not be ſeuered, as in the caſe aforeſaid, where two be poſſeſſors of the wardſhip of the body of a child within age, if one of them ſhall take the child out of the poſſeſſion of the other, the other hath no remedy by any action at the Law, but to take the child out of the others poſſeſſion, when he ſeeth his time.

Forme of pleading.

Finally, ye ſhall vnderſtand, that when a man in pleading and declaring his cauſe, will ſhew a deede of feoffement made vnto him, or a gift in taile, or a leaſe for terme of life, of any lands or tenements, he ſhal vſe his terms in this wiſe, & ſay, by force of ſuch feoffment, gift, or leaſe he was ſeiſed, &c.

But

But where a man will declare or pleade a lease or grant made vnto him of a chattell reall or personall, then he shall say by force of which he was possessed.

Of Partition to be made of Ioyntenants and tenants in common, enacted by two Statutes made the one in Anno 31 H. 8. and the other in 32 H. 8. Chap. 18.

ALL ioyntenants and tenants in common of any estate of inheritance in their owne rights or in the right of their wiues, of any lands or hereditaments within this realme of England, Wales, or the marches of the same, shall and may be compelled to make partition betweene them, of the same which they so hold as iointenants or tenants in common, by a writ de partitione facienda, to be deuised in the Chancerie in like manner as coparceners are compelled to do, and the same writ to be pursued at the common law. And after such partition made, euery of the said iointenants and tenants in common, shall and may haue aide of the other, or their heirs, to the intēt to deraigne the warranty parramount, and to recouer for the rate as it is vsed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide praied

Item in the xxxij. yeare of King Henrie the eight, chapter xxxij. It is further enacted, that all iointenants and tenants in common, which hold iointly or in cōmon for terme of life, yere or yeres, or iointenants or tenants in common, where one or some of them haue an estate for terme of life, or

peares, with other that haue an estate of inheritance or freehold in any lands or other hereditaments, shall be compellable by writ of partition to be pursued out of the Chauncerie vpon their cases, to make seuerance and partition of all such lands and hereditaments as they hold ioyntly or in common for terme of life or liues, yere or yeares or where one or some of them hold ioyntly or in common for terme of life or yeres with other that haue an estate of inheritance of freehold. Prouided that no such partition nor seuerance, be hurtfull to any person, other then such as be parties vnto the said partition, their executors or assignes.

Of Conditions. Chap. 19.

FOrasmuch as euerie estate is either pure or conditionall, it were not amisse to make some declaration of the nature and efficacie of conditions. Wherefore ye shall vnderstand, that of conditions, some be actual conditions, and be called expresse conditions, or conditions in deed: and other some be conditions in law, which be called in latine, conditiones tacitæ siue conditiones implicitę, because they be secretly implied by the law and not expressed.

Diuision. Conditions in deed, be such as be knit and annexed by expresse words of the feoffement, lease or grant, either in writing or without: as for example, if I infeoffe a man of certain lands, reserving to me, and to my heires, so much rent yearly to be paid at such a feast, and for default of payment, that it shall be lawful for me to reenter, this is a feoffement vpon condition of payment. And

here

here the reentry of ỹ feoffor for the not payment of the rent, shal dissolue and vtterly defeat the feoffement. Semblable it is of gifts in tayle, leases, &c. But if the condition bee, that for default of payment of the rent, it shall be lawfull for the feoffor to enter againe into the lands, and to hold them till he be contented and satisfied for the rent: this condition not performed, doth not dissolue nor vndoe the feoffement, but onely giueth to the feoffor an authoritie to retaine the lands (as it were by way of distresse) till he hath leuied the arerages of the rent. Distresse.

And ye shall well marke and obserue, that conditions be sometime made to be performed on the feoffées behalfe, and sometime on the feoffors behalfe. On the feoffées behalfe, as when I infeoffe you of landes or tenements, vpon condition that you shall doe such an act, as to pay vnto me or mine heires such an annuall rent. On the feoffors behalfe, as when I make a feoffement vnto you vpon condition, that if I pay or cause to be payed vnto you before such a day, such a sum of money, then it shall be lawfull for me to enter againe and retaine my lands in my former estate: In this case he that is the feoffee, is called tenant in morgage, wich is as much to say, as dead gage, and it seemeth that the cause why it is so called, is forasmuch as it is doubtfull whether the feoffor will pay at the day limitted and prescribed such a sum of money for the redemption of his lands, or not: for if he doe not, his title or interest in the landes thus gaged or oppignorate, is vtterly extinct and gone, without all hope of renewing. Tenants in morgage.

Ye shall also note, that if the morgagor dieth be-

foꝛe the day of payment, his heiꝛe may redéme the land veꝛy well, euen as well as his anceſtour that moꝛgaged the land might haue don, although there be no mention made of heiꝛs in the wꝛiting.

Conditions void.

Alſo if when the mony is lawfully by the moꝛgager, oꝛ his heiꝛe tendeꝛed oꝛ pꝛoferꝛed, and the leſſoꝛ refuſeth to receiue the ſame, the feoffoꝛ oꝛ his heiꝛe may enteꝛ, and then hath the feoffée no remedie foꝛ his money at the common law. Ye ſhall vnderſtand alſo, that ſome conditions be vtterly void in the law, and of none efficacie, vertue, oꝛ ſtrength. As if a feoffement be made of landes in fée ſimple vpon condition that the feoffée ſhall not alien oꝛ put awaye the ſame to none other, this condition I ſay is void, becauſe the feoffée is reſtrained of his whole poweꝛ that the Law giueth in ſuch caſe vnto him, and which poweꝛ and libertie is in a manner included in euery feoffement: yet I may abꝛidge him of part of his poweꝛ, as to condition with him, that he ſhall not alien the lands to ſuch a perſon, oꝛ ſuch.

Gift in taile vpon conditions.

But of gifts in taile otheꝛwiſe it is: foꝛ if I giue lands to a man and to his heiꝛes of his bodie lawfully begotten, vpon condition that he noꝛ his heiꝛes ſhall alien the lands to none other perſon, this condition is good and effectuall in the Law, and if he oꝛ his heiꝛes contrarie to the condition doe alien them, then the giuer and his heiꝛes may veꝛy well enteꝛ and retaine the lands foꝛ euer, becauſe this condition ſhall ſtand with the foꝛe named Statute of Weſtminſter the ſecond, which pꝛohibiteth ſuch alienations to be made.

Hitherto haue I ſpoken of Conditions in deede, now will I ſhew what be Conditions in law

law that be annexed to any estates.

Know ye therefore, that if the office of a Parker, Steward, Constable, Bedell, or Bailife, or such like office, be graunted to a man for terme of his life, though there be no condition at all mentioned in the grant, yet the law speaketh of a condition in this case, which is, that if the partie to whome such office is given, shall not execute all points appertaining vnto his office accordingly by himselfe, or his lawfull deputie, it shall be lawfull for the grantor to enter and discharge him of his office, and this condition is called a condition in law. Estates vpon conditions in law.

There be also three other manner of Estates vpon condition, that is to say, conditions against the law, conditions repugnant, and conditions impossible. First, estates vpon conditions against the Law be, as if a man make a feoffment, gift, grant, or leale, vpon condition, that if the feoffors donors, grauntors or lessors, kill J. S. which is not the Kings Enemie, or burne his house, that then it shall be lawfull to the feoffors donors, &c. to reenter, this condition is void, and the estate good. Conditions against the law.

And like Law is, if such conditions be to bee performed of the part of the feoffee, grantee, &c.

But if it be, that a lease for terme of yeares bee made of land vpon condition, that if the lessee kill J. S. that then he shall haue fee simple, although that he in this case performe the condition, his estate is nothing therby inlarged, because the condition is against the law.

And ye shall vnderstand, that where an Obligation is indorsed with a Condition which is against Oligation.

against the law, both the obligation, and also the condition be clearely void in the law.

Conditions repugnant.

Estates vpon conditions repugnant be, as if a feoffement, or a gift in tayle be made, vpon condition that the feoffée or donée shall take no profit, or shall doe no waste: such other like, such conditions be void, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for term of life, vpon condition that he shall not doe fealtie, that is as a void condition.

Likewise it is, if a man that hath nothing in the manour of Sale, graunteth a rent charge going out of the same, vpon condition that the person shal not be charged, this grant is good, and the condition is void.

Conditions impossible.

Estates vpon conditions impossible be, as if a feoffement be made vpon condition, that if the feoffee goeth not through the sea on foote to Calleis in one day, then it shall be lawfull to the feoffer to reenter, this is a frustrate and void condition, and yet the estate is good.

Like law is of a lease made for terme of years, &c. or an obligation with a condition impossible vt supra, the obligation or lease is good, and the condition void to all purposes.

An act how Strangers shall take aduantage of Conditions made, Anno 32. H. 8. Chap. 20.

IT is enacted, that as well persons which haue, or shall haue any gift or grant of the King by his letters pattents, of any lands, parsonages, titles

titles, or other hereditaments, or any reuersion of the same which did belong to any monastery or other Ecclesiastical houle dissolued or otherwise come into the kings hands since the fourth day of Febrvary in the xxvij. yeare of our Soueraigne Lord king Henry the eight, or which at any time heretofore did belong to any other person, and after come into the kings hands, as also other persons being graunteés or assignees to the King or to any other person, their heires, executors, successors, and assignes, shall haue like aduantage against the farmours, and their executors, administrators, and assignes, by entry for nonpaiment of the rent, or for doing waste or other forfeiture, and also shall haue the same aduantage by action onely, of not performing of other conditions, couenants or agreements contained in the indentures of their leases or grants against the said farmors, and grantées, their executors, administrators, and assignes, as the said lessors or grantors themselues might haue had at any time. And againe mutually and on the other side, the said farmors and grantées for terme of yeares, life, or liues, their executors, administrators, and assignes, shal haue like aduantage against them for any condition, couenant and agreement contained in the said indenture, as they might haue had against their said lessors and grantors, their heirs successors, all benefits and aduantages of recoueries in value, by reason of any warranty of déed, or in law by voucher or otherwise onely except.

Prouided that this Act shall not extend to charge any person for breach of any couenant or condition compriſed in any such writing, but for such

such as shall be broken and not perfourmed after the first day of September in the 32 yeare of this King and not before.

Liuery of seisin, and Atturnement Chapter 21.

IN all Feoffements, gifts in tatle, leases for terme of anothers life, of lands or tenements, there can be no alteration or transmutation of possession by the antient lawes of this Realme, vnlesse there be a certaine ceremonie adhibited and solemnised in the presence and sight of neighbours or others, which ceremonie is called liuery of seisin.

The maner of liuerie of seisin.

And ye shall vnderstand, that this ceremonie of liuery of seisin is done, when the feoffor, donor, lessor, or their deputie come with the neighbours solemnly to the lands or tenements, and they put the feoffee, donee or lessee, in possession of the said lands or tenements, by deliuering vnto him a clod of earth, or the ring of a dore, or some other thing in the name of seisin, and for this seike cause this ceremonie of law is called liuerie of seisin, that is to say, a tradition or giuing of seisin.

Diuersitie betweene possession and seisin.

But this ceremonie is not required in leases, for terme of yeares, or in leases at will, forasmuch as the lessour in such lease remaineth still seised, and the lessee onely hath possession without any liuery of seisin: and therefore the termes of the law be, that such a man is possessed, whereas in feoffements, gifts in tatle, and leases for life, he is called seised.

Wherefore if a Feoffement or lease for life be made

made of lands or tenements, and before that the liuerie of seisin be made, the Feoffor dyeth, the heire of the Feoffor shal haue the lands, per summum ius, that is to say, by the rigour of the Law; notwithstanding that the Feoffee haue payd to the Feoffor the price of the land, and although the Feoffee be in possession. But otherwise it is of a lease for the terme of yeares.

Like ceremonie is vsed when rent charge, rent seruice, rent in grosse, a villaine in grosse, common in grosse, common in beasts, certaine stouers, and such other things as passe by way of grant, be granted, for it is no full and perfect graunt till it be consignat and sealed as it were with the ceremonie of atturnment. This atturnement is nothing else, but when the tenant of the land of which a rent granted is granted, or out of which a rent is granted, doth make some euident signification and token that he accepteth the person to whom the grant is made, to be in the same respect vnto him that the grantor was. As for an example, if the tenant of the land, after he haue heard of the grant, commeth to the grantee, that is to weet, to the person to whom the graunt was made, and say in this wise or in like effect. Atturnement.

I agree vnto the grant made vnto you by such a man, or I am well apaid and contented of the grant that such a man hath made vnto you. But the most vsuall frequent forme of atturnement is, to say; Syr, I atturne vnto you by force of the said grant, or I become your tenant, or to deliuer vnto the grantee a penie, or a halfe peny by way of atturnement. How atturnement shall be made.

If

If a man maketh first one graunt to one person, and after another to another person, that grant shall stand to which the tenant will atturne although it be to the latter grant.

And ye shall note, that if a man be seised of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same manour to another, vnlesse the tenant of the manour do atturne, the seruice shall not passe, onely tenants at will excepted, for it needeth not to cause them to atturne.

Diuersitie. Note furthermore, there is great difference betweene giuing a penie in name of seisin, and giuing by way of atturnement, for when it is giuen by the tenant to the grantee in the name of seisin, it doth not only imply an atturnement, but also it giueth him such a seisin, that if the rent afterward were behind and not paied, he may now vpon the

Assise. seisin of the penie after a lawfull distres taken, and after rescous made, bring an assise of nouell disseisin, whereas if it were giuen onely by way

Writ of rescous. of atturnement he could not bring the assise, but his writ of rescous onely, if rescous were made.

Also ye shall vnderstand, that where lands be deuisable by Testament by the custome of any antient Borough or citie, if the reuersion of any lands be by testament bequeathed to a man in fee, and the testator, which we call the deuisor, dieth, the deuisee, that is to wit, he to whom the deuise was made, hath forthwith the reuersion in him

Atturnement. without further ceremony of atturnement. Likewise it is if a man by testament doth bequeath a rent charge that he is seised of, or a rent seruice, there needeth no atturnement at all.

If

If two ſointenants be of land, and the Lord granteth the ſeruices to another, if one of the ſointenants atturneth, it is enough.

Finally, if a leaſe be made for terme of life, the remainder to another in taile, the remainder ouer to the right heire of the tenant for terme of life, in this caſe if the tenant for terme of life, will grant his remainder in fee to another by his deed this remainder paſſeth forthwith without any atturnement, for if any atturnement were requiſite, it ſhould be made of the tenant for terme of life, which in this caſe is the grauntour himſelfe. And in vaine it is that the grantor ſhould be inforced to atturne, ſith an atturnement is adhibited & had to none other purpoſe then to haue the conſent and agreement of the particular tenant, to the intent that it may appeare, that he hath notice and knowledge of this grant: but here where the particular tenant himſelfe is the grantor, an atturnement were ſuperfluous, and more then needed. Not requiſite.

Note furthermore, that where there is Lord and tenant, and the tenant leaſeth his tenements to a woman for life, the remainder ouer in fee, the women taketh a huſband, and after the Lord granteth the ſeruices, &c. to the huſband, in this caſe during the couerture, the ſeruices be but in ſuſpence. But if the wife die, liuing the huſband, the huſband and his heires ſhall haue the rent of them in the remainder, &c. And in this caſe there needeth no atturnement by word, becauſe the huſband that ought to returne, accepteth the grant of the ſeruices, the which acceptance is an atturnement in the law. Suſpence.

Of

Of Seruice. Chap. 22.

HItherunto haue I briefly touched & ouerrun the sundrie kinds and formes of estates: Now forasmuch as there is no tenure, but hath vnto it some seruice knit & annexed, it were very necessarie to declare how many kinds of services there be, and what seruice is due to euery tenure. For the knowledge herof, ye shal vnderstand that the principall and most cõmon kind of seruice that the tenant oweth to his lord, is called knights seruice.

Knights seruice. Chap 23.

KNights seruice includeth homage, fealty, & for the most part escuage, and whosoeuer holdeth his lands by knights seruice, is bound by the law of this realme to do vnto his Lord homage, and fealty, and to pay for the most part escuage, when it shall be assessed by authority of parliament, as hereafter more plainly shalbe declared.

Homage. Homage is the most humble and reuerent seruice that a man of free estate and condition can doe, for when the tenant shall doe homage to his Lord, the Lord shall sit, and the tenant then shall kneele down before him vpon both knees, holding his hands betweene his Lords hands, and say in this wise: I become your man from this day forward, of life, and of member, and earthly honour, and to you shall be faithfull and true, and faith to you shall beare for the lands that I claime to hold of you: sauing the faith that I beare vnto our soueraigne Lord the king. And then the Lord so

How the tenant shal do homage

sitting

ſitting ſhall kiſſe him. But if an Eccleſiaſticall perſon, which by his order and profeſſion hath addicted himſelfe to the ſeruice of God in eſpecial, ſhall doe homage to his Lord, hee ſhall ſay, I doe to you homage, and ſhall be to you faithfull and true, and faith to you ſhall beare for the tenements that I hold of you, ſauing the faith which I owe to our ſoueraigne lord the King. What a religious perſon ſhal ſay when hee doeth homage

Alſo when a woman not married, doth homage to her Lord, ſhe ſhal not ſay, I become your woman, for it is not conuenient that a woman ſhall be the woman of any other then of her husband that ſhe ſhall marrie, but ſhall ſay euen as the Eccleſiaſticall perſon ſaith, I doe vnto you homage, &c. And if perchance a man holdeth ſundry lands and tenements of ſundrie Lords, and euery of them by Knights ſeruice, then in the end of his homage making, hee ſhall ſay, ſauing the Faith that I owe to our ſoueraigne Lord the King, and to mine other Lords. And none is bound to do homage to the Lord, vnleſſe it be ſuch tenant as hath in the tenancie a ſtate of fee ſimple, or fee taile, either in his owne right, or in the right of another. For if a woman haue landes and tenements in fee ſimple, or fee taile, which ſhe holdeth of her Lord by Knights ſeruice, and taketh an husband, and hath iſſue, in this caſe the husband in the life of his wife, ſhall doe homage, becauſe he hath title to haue the lands by the curteſie of England, if he ouerliueth her, and alſo he holdeth them now in his wiues right: yet before iſſue had between them, the homage ſhall be made in both their names. But if the woman dieth before any homage made in her life, and the husband what a woman ſhall ſay. What tenant ſhall homage.

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keepeth ſtill the landes as tenant by the courteſie, now he ſhal not doe homage to his Lord, becauſe he hath now an eſtate but for terme of life.

Fealtie. Fealtie is as much to ſay, as fidelitie, or faithfulneſſe, in doing whereof the tenaunt ſhall hold his hand vpon a booke, and ſay thus: Heare you this my Lord: I to you ſhall be faithfull and true, and faith to you ſhall beare for the lands and tenements, which I claime to hold of you, and duely ſhall doe to you the cuſtomes and ſeruices which I owe to do to you at the termes aſſigned as helpe me God And then he ſhall kiſſe the booke.

How a tenant ſhall doe fealtie.

Diuerſitie betweene homage and fealtie. But he ſhall not kneele as he that doth homage, nor doe ſuch humble or reuerent ſeruice as is before declared in homage.

And yee ſhall obſerue, that homage cannot bee done but the Lord himſelfe, whereas the ſtewart of the lords court, or the bailif may take fealty for the Lord.

Alſo tenant for terme of life ſhall doe fealty but homage as I ſaid he cannot doe.

Now as concerning Eſcuage, that is to ſay, the ſeruice of the ſhield, ye ſhall vnderſtand, that hee that holdeth his lands by Eſcuage, when the King maketh a voyage royall into Scotland for the ſubduing of the Scots, is bound to bee with the Kings Maieſtie by the ſpace of fortie dayes, well and conueniently arrayed and appointed for the warre. And he that holdeth his land but by the moitie of the fee of Knights ſeruice, is bound by the force of his tenure to be with the King by the ſpace of twenty dayes, and ſo proportionably according to the rate and quantity of his tenure.

But now to our institute and purpose, after this voyage royall into Scotland, in which the king goeth in person, and after his returne into England againe, a Parliament is woont to bee summoned, in which shall be prescribed and assessed what euery person that held his land by homage, and went not with the King, neither by himselfe nor by his deputie, shall pay to the Lord in satisfaction of his not seruing: and according to the taxation hereof, euery tenant shall pay to his immediate Lord, whether it be to the king or other, after the rate and portion of his tenure: if he holdeth by a whole fee, hee shall pay the whole escuage, if by a moyty the halfe, if by the fourth part of a fee, the fourth part, &c. And this money thus assessed is called scutage, or escuage, for which the Lord to whom it is due, may very well for the non payment therof distreine. But here is to be noted, that some tenants by custome vsed time out of mind, are bound to pay but the moitie or the third part of that, which shal be assessed and limitted by act of parliament. Parliament. Distresse of Escuage.

Yea, and the custome is in some place, that to what summe of money soeuer Escuage is assessed the tenaunts shall pay neuer but such a certaine summe of money: and this kind of Escuage, is called Escuage certaine, that is to say, where Escuage is assessed by the Parliament, to a more or lesse summe, the tenaunt to pay to the Lord fiue shillings, and no more nor no lesse, &c. such a tenure is called Socage tenure, and not Knights seruice, whereas the other is called Escuage vncertaine. Escuage certaine.

Eſcuage vncertaine.

Finally ye ſhall vnderſtand, that eſcuage vncertaine is alwayes adiudged to be Knights ſeruice, and draweth vnto it ward, mariage, and reliefe: but eſcuage certaine is not knights ſeruice, but is of the tenure of ſocage, as ſhall be hereafter more amply ſhewed.

Of Ward, Mariage, and Reliefe. Chap. 24.

EVerie knights ſeruice draweth vnto it, Ward Mariage, and Reliefe: wherefore it is now right expedient ſomewhat to treat of them.

Ward.

Ye ſhall therefore be admoniſhed, that when the tenant which holdeth his landes by Knights ſeruice dyeth, his heyre male being at that time within the age of 21 yeares, the Lord ſhall haue the ward, that is to ſay the cuſtodie or keeping of the landes ſo holden of him, to his owne vſe and profit, till the heire commeth to the full age of 21. yeares. For the law here preſumeth that till hee come to his age, he is not able to doe ſuch ſeruice, as is of this tenure required.

Mariage.

Furthermore if ſuch heire be vnmaried at the time of the death of the tenant, then the Lord ſhall haue alſo the ward, and the beſtowing of the mariage of him.

The fulage of a woman

But if a tenant by knights ſeruice dieth, his heire female being of the age of fourteene yeares or aboue, then the Lord ſhall haue the Warde neither of the Land, ne yet of the body of ſuch an heire: And the reaſon hereof is, becauſe a woman of that age, may haue a huſband able to doe

doe knights seruice, that is to say, to wait vpon the Kings Maiesties person, when he goeth into Scotland with his armie royall.

But if such an heire female be within age of 14. yeares, and not maried at the time of the death of her auncestor, then the Lord shall haue the ward of the land holden of him, till such heire female commeth to the age of 16 yeres, by force of an act of Parliament in the statute of Westminster, 1. cap. 22.

Note, that there is a great diuersitie in the law, betweene the ages of females and of males, for the female hath these many ages appointed by the Law. First, at seuen yeares of age the Lord her father may distreine his tenants for ayde to marry her. Secondly at nine yeares of age shee is dowable. Thirdly at twelue yeees she is able to assent to Matrimonie. Fourthly at foureteene yeres she is able to haue her land, and shall be out of ward, if she be of this age at the death of her ancestor. Fifthly, at sixteen yeres she shall be out of ward, though at the death of her ancestor she was within the age of fourteen yeres. Sixthly at twenty one yeres she is able to make alienations of her landes or tenements: whereas the man hath but two ages, the one at fourteene yeres to haue his lands holden in Socage, and to assent to matrimonie, the other at twenty to make alienations.

Diuersitie of age.

Age of a woman.

The age of a man.

Yee shall vnderstand, that by the Statute of Merton, 6. Chap it is inacted, That if in case the Lord doe marrie their Wards to Villaines or others: (whereby is disparagement) if such heirs so maried be within the age of fourteen

yeeres, or such age that the said Ward cannot consent to the marriage, then if the friends of this heire complaine, and feele themselues grieued with this vnmete marriage, the next of kinne to the heire, vnto whom the heritage cannot descend, may enter into the lands, and put out the Lord. which is gardeine in chiualrie: and if the next kinsman will not thus doe, another kinsman of the infant may doe it, and shall take the issues and profits to the behoofe and vse of the heire, and shall yeld accompt thereof vnto him, when he commeth to his full age.

Accompt giuing.

Diuers disparagemēts

And there be diuers other disparagements, which be not expressed in the said statute: as if the heire being within age of consent, & in ward, be married to a decrepit person, or cripple, as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continuall infirmitie: All these and such like be disparagements.

But here also ye shall vnderstand, that it shall be said no disparagement, vnlesse the heire be so married when he is within age of discretion, that is to say, within the age of 14. yeeres. For if he be of that age, or aboue, and assenteth to such marriage, it is no disparagement, neither shal the Lord for such marriage lose his ward, because it shalbe reputed & assigned to the folly of the heire, being of age of discretion, to consent to such marriage.

Value of marriage.

Now if the Lord then being a gardeine, offer to the heire being his ward, a conuenient marriage without disparagement, and the heire refuseth it, as he may at his choise and election very well doe, then the Lord shall haue the value of the

the marriage of such heire, when he commeth to his full age. But yet if he marrie himselfe being so in ward, against the will of his gardaine, then he shall pay the double value, by force of the Statute of Merton before remembred.

Double value of marriage.

And ye shall note, ℣ if lands holden by knights service descend to an infant or child within age, from his mother, or from any of his auncestors, his father being yet alive, in this case the Lord shall not haue the marriage of his heire: for during the life of his father, the sonne shall be ward to no man.

One shall not be ward his father liuing.

Finally, it is to be known, that he which is gardein in chiualry in right, may before he hath seised the ward, graunt the same either by deed or without deed to another man, & then he to whom such a graunt is made, is called gardein in fait.

Now as touching Reliefe, ye shall know, that if a man holdeth his land by knights service, and dieth, his heire being of full age (the full age of the male is 21. yeares, of the female 14) then the Lord of whom the land is holden, shal haue of the heire relefe.

Note ye, that all Earles, Barons, or other the Kings tenants (holding of him in chiefe by knights service) which die, their heire being of full age at the time of their deaths, that is to say, 21. yeares of age, they ought to pay the old relefe for their inheritance: that is, the heire or heires of an Earle, for an whole Earledome, 100. li. The heire or heires of a Baron for an whole Baronie, 100. Markes. The heire or heires of a Knight, 100. shillings, and he that hath lesse, shall giue lesse, according to the olde

cuſtome of fées. Like law is obſerued of all others that hold of any other Lords immediatly, vt ſupra.

Alſo a man may hold lands of a Lord by two knights fées, and then the heire being of full age at the death of his anceſtor, ſhall pay to his Lord for relefe x. pounds.

Seruice of Caſtle garde. Chap. 25.

YE ſhall vnderſtand, that a man may hold by knights ſeruice, and yet not hold by eſcuage, nor ſhall pay any eſcuage, for he may hold by Caſtle garde, that is to ſay, by ſeruice to keepe a towre of his Lords caſtle, or ſome other place, vpon a reaſonable warning, when his Lord heareth that enemies will come, or be alreadie come into England.

Ground in the Law. This ſeruice is alſo knights ſeruice, & draweth to it, Ward, Marriage, and Relefe, as in all caſes the common knights ſeruice doth.

Of graund Sergeantie Chap. 26.

THere is alſo another kind of knights ſeruice, which is called graund Sergeantie, that is, where a man holdeth his lands or tenements of the King, by which ſeruice as he oweth in proper perſon to do, as to beare the Banner of our Soueraigne Lord the King, or his Speare, or to conduct his Hoſt, or to be his Marſhall, or to be the Sewer, Caruer, or Butler, at the feaſt of the Coronation, or to be one of his Chamberlains of the receipt of his Eſchequer, or to do like ſeruice

to

to the King in proper person, such manner of service I say is called grand Sergeantie, that is to say, a great or high service: and the cause why it is so called, is because it is the most honourable and most worthie service that is: for he that holdeth by escuage, is not appointed by his tenure, to do any other more speciall service then another is bound that holdeth by escuage: but he that holdeth by graund sergeantie, is bound to do some speciall service to the king. The most high service.

Also, if he that holdeth of the king by graund sergeantie dieth, his heire being of full age, then the heire shall pay to the king for relieue, not onely C. s. as he that holdeth by escuage shall do, but moreouer the cleare yearely value of those lands and tenements which he so holdeth of the king by graund sergeantie. Reliefe of the tenant by graund sergeantie.

Furthermore ye shall obserue, ỹ in the Marches of Scotland, some men hold of the king by cornage, that is to say, blowing of an horne, to the intent to warne the men of the countrey, when they heare that the Scots or other their enemies be comming, or be already entred into England, which service is also a kind of graund sergeantie. Graund sergeantie therefore is as much to say in Latine, as Magnum seruitium, that is to say, a great or high seruice. Like as pette sergeantie is called Parvum seruitium, that is to say, a little or small seruice. Tenure by Cornage. Definition of Sergeantie.

But to reuert againe to the matter, ye shall note, that if any tenant holdeth of any other lord then of the king by such service of cornage, then it is no graund sergeantie, but yet neuertheless, it is knights seruice, and draweth to it ward, mar-

riage,

Rule in the Law.

riage and reliefe, for this is a rule infallible, that none can hold by graund Sergeantie, but of the Kings Maiestie onely.

Finally, ye shall vnderstand, that all they which hold of the king by this seruice called graund sergeantie, do hold of the king by knights seruice, and by vertue of this tenure the king shall haue of them ward, mariage, and reliefe: but escuage yet he shall not haue of them, vnlesse they hold by escuage of him by expresse speciall words.

Petie Sergeantie. Chap. 27.

Petite sersocage is socage in effect.

TEnant by Petite Sergeantie, is he that holdeth his land immediatly of our Soueraigne Lord the King by the manner of seruice, to pay to the King yearely, either a Bow, a Speare, a Dagger, a paire of Gauntlets, a paire of Spurs of Gold, a Shaft, or such other small things appertaining to the warre: and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to go, ne do any thing in his owne proper person, touching the war, but onely to render and pay yearely certaine things to the King, as a man ought to pay rent. Wherfore this seruice of Petite sergeantie is no knights seruice. But yet ye shall note, that a man cannot hold either by Petie sergeantie, neither by Graund sergeantie, but of the King onely.

Homage auncestrel. Chap. 28.

TEnant by Homage auncestrel, is he which holdeth his land of his Lord by homage, and both

both he and his ancestors, whose heire he is, haue holden the same land of the said Lord, and of his auncestors time out of mind by homage, and haue done vnto them homage, and this is called homage auncestrell, by reason of the long continuance: which hath beene by title of prescription, aswell concerning the tenancie in the blood of the tenant, as concerning the Lordship in the Lord. And this seruice of homage auncestrell draweth vnto it warranty: that is to say, if the Lord which is now in life, hath once receiued the homage of his tenant, he ought to warrant the same tenant, what time soeuer he shall be impleaded or sued for such lands so holden of him by homage auncestrel. Warrantie because of homage auncestrel.

Moreouer, such seruice of homage auncestrell draweth vnto it acquittall, that is to say the Lord ought to acquite the tenant against other Lords that can demaund any manner of seruice of the tenancie.

Wherefore if in this case the tenãt which holdeth by homage auncestrel be impleaded of his lands, and auoucheth or calleth the lord to warrantie, who commeth in by Processe, and demaundeth of the tenant what he hath to bind him to the warranty, and the tenant sheweth how he and his ancestors, whose heire he is, haue holden his lãds of him and his auncestors time out of minde: surely the Lord, if he cannot deny this, and if hæ hath receiued the homage of such a tenaunt, is bound by the law to warrant him his land: so that if the tenant lose his lands in default of the Lord thus auouched, that is to say, called to warrantie, hee shall recouer against him as much in

value

value of those lands & tenements which the Lord had at the time of calling to warrantie, or at any time after. But if the Lord neuer receiued the homage of his tenant, then hee may very well, when he is thus vouched, disclaime in the Lordship or seignorie, and so put out the tenant of his warrantie. Wherefore ye shall note, that in euery case where the Lord disclaimeth in his seignorie in Court of Record, his seignorie or Lordship is extinct, and the tenant shall hold from thencefoorth of the next Lord to him that thus disclaimeth.

Thus ye perceiue, that homage auncestrel is not, but whereas is a long continuance, as well in the bloud of the tenant, in respect of his tenancie, as in the bloud of the Lord in respect of his seignorie. Wherefore if the tenant doth once alien his landes to another, although he purchase the same againe, yet he shall not hold any longer by homage auncestrel, because of his discontinuance, but shal hold it now by the vulgar and accustomed homage.

Of Liueries. Chap 29.

Tenant in chiefe of the king.

When one dyeth which held of the King by knights seruice in Capite, that is to say, in chiefe, his heire being within age, the king (as before is declared) shall haue the wardship and custodie, as well of the lands as of the bodie, that is to wit, the marriage, if he bee vnmarried. But if the heire be of full age at the time of the death of such auncestor, yet shall the king by his prerogatiue royall haue primer seisin of all the landes, tenements, and other hereditaments,

Primer seisin.

ditaments, whereof such his tenant was seised in his demeane as of fee. And if such an heire will enter into his landes when he commeth to his full age, before hee sue his Liuerie, and receiue seisin by the King, no freehold shall accrew nor grow vnto him, but he shall be deemed an intruder into the kings possession: yea, and if he die so seised in the meane time, his wife shall haue no dower of such land: wherefore it behoueth in any wise, that such heire, as well male as female, comming to ful age, before he or she enter into their land, to sue liuery. The manner and forme whereof according to the Act of Parliament lately promulgated and set forth, I entend briefly to recite.

Intruder vpon the kings possession.

How heires ought to sue their Liueries enacted 33 H.8 cap 21.

Chap. 30.

NO person or persons hauing lands and tenements aboue the yearely value of 5. l. shall haue any liuerie before inquisition or office found before the Escheator or other Commissioner, by vertue of the Kings writ of Diem clausit extremum, or by Commission directed out of the Chancery or other Courts, hauing authoritie to make such a writ or commission, which shall not passe out of the same but by warrant, or bil assigned, and subscribed by the master of wards & liueries, the Surueyor, Atturney, and Receiuer of the said Court, or three, two, or one of them, to be directed and deliuered to the Chancelor of England, or to any other Chancelor or officer hauing

Writ Diem clausit extremum.

power

power to award such writs, and for the writing and sealing of the same shalbe paid the accustomed fees. But if the lands exceed not the said yearely value of v. l. they shall pay for the seales of euerie such writ or commission, viij. ō. and for the writing vj. ō. and not aboue.

And the Inquisitions and Offices hereupon found, shall be returned by the said Escheators or Commissioners, into the same Court from whence the writ or Commission was awarded: which done, the Clarkes of the petty Bagge shall receiue the same offices, and make a transcript thereof to the Master of the Wards and Liueries. And then the said Master and the Surueyor, Atturney, and generall Receiuor, or three of them, whereof the Master or Surueyor to be one, shall couenant and indent with such persons for their Liueries of the Castles, Manours, Lordships, Lands, Tenements, and Hereditaments, comprised, or not comprised in such offices, and shall make and set a rate and price of the same, and appoint the dayes of payment thereof by Obligation to be taken for the same to the King.

And euery bill, for any speciall or generall Liuerie assigned, by the hands of the said Master, Surueyour, Atturney, Receiuour, or three of them, whereof the Master or Surueyour to bee one, shalbe warrant sufficient to the Lord Chancelor, or other officer, having power to passe Liueries vnder any of the Kings seales accordingly. In which case the Clarks of the petie bagge, or other Clerks, by whom the Liueries be written, shall receiue as well for themselues, as for other,

other, such fées as haue béene accustomed.

Item euery person may sue at his pleasure a generall Liuerie for any Mannours, Lands, Tenements, Rents, Reuersions, Remainders or other Hereditaments, whereof the cleare yéerely value shall not exceede twenty pound. Prouided that an office be thereof found, and a warant first obtained of the said Master and others, as is aforesaid. Generall liuerie.

And where such general liuery is sued, if the lands exceed the yeerely value of v.l. they shal pay for the seale xx s. iiij. d. and all oteer fées accustomed, as afterward shall be declared. But if they exceed not the yerely value of v. l. they shall pay but these fées following: that is to say, for the seale of the liuery xij d. To the clerkes of the pety bag for the writing, and the inrolling xx. d. For the respect of the homage in the Hanaper viij. d. To the Lord great Chamberlain xx d. To the Master of the Rolles, xx. d. And the Clarke of the liueries for the warrant and inrolling of the Liueries xx. d.

Item no person or persons shal pay in the Exchequer, or any other courts for the respect of homage, for any lands or hereditaments, not exceeding the yerely value of v. l. aboue viij. d. And for the entring thereof, and warrant of Atturney, aboue iiij d. Respect of homage.

And the value of such Landes and Hereditaments not exceeding the yearely value of xx. l. shall bee taken as it is limitted in the offices founden thereof, except by the examinations and certificate of the said master, Surueyour, Atturney, or Receiuor, or three of them, it shall

otherwise

power to award such writs, and for the writing and sealing of the same shalbe paid the accustomed fees. But if the lands exceed not the said yearely value of v. l. they shall pay for the seales of euerie such writ or commission, viij. d. and for the writing vj. d. and not aboue.

And the Inquisitions and Offices hereupon found, shall be returned by the said Escheators or Commissioners, into the same Court from whence the writ or Commission was awarded: which done, the Clarkes of the petty Bagge shall receiue the same offices, and make a transcript thereof to the Master of the Wards and Liueries. And then the said Master and the Surueyor, Atturney, and generall Receiuor, or three of them, whereof the Master or Surueyor to be one, shall couenant and indent with such persons for their Liueries of the Castles, Manours, Lordships, Lands, Tenements, and Hereditaments, comprised, or not comprised in such offices, and shall make and set a rate and price of the same, and appoint the dayes of payment thereof by Obligation to be taken for the same to the King.

And euery bill, for any speciall or generall Liuerie assigned, by the hands of the said Maister, Surueyour, Atturney, Receiuour, or three of them, whereof the Master or Surueyour to bee one, shalbe warrant sufficient to the Lord Chancelor, or other officer, hauing power to passe Liueries vnder any of the Kings seales accordingly. In which case the Clarks of the petie bagge, or other Clerks, by whom the Liueries be written, shall receiue as well for themselues, as for other,

other, such fées as haue béene accustomed.

Item euery person may sue at his pleasure a generall Liuerie for any Manours, Lands, Tenements, Rents, Reuersions, Remainders or other Hereditaments, whereof the cleare yéerely value shall not exceede twenty pound. Prouided that an office be thereof found, and a warant first obtained of the said Master and others, as is aforesaid. Generall liuerie.

And where such general linery is sued, if the lands exceed the yeerely value of v.l. they shal pay for the seale xx s. viij. d. and all oteer fées accustomed, as afterward shall be declared. But if they exceed not the yerely value of v. l. they shall pay but these fées following: that is to say, for the seale of the liuery xij d. To the clerkes of the pety bag for the writing, and the inrolling xx. d. For the respect of the homage in the Hanaper viij. d. To the Lord great Chamberlain xx d. To the Master of the Rolles, xx. d. And the Clarke of the liueries for the warrant and inrolling of the Liueries xx. d.

Item no person or persons shal pay in the Exchequer, or any other courts for the respect of homage, for any lands or hereditaments, not exceeding the yerely value of v. l. aboue viij. d. And for the entring thereof, and warrant of Atturney, aboue viij d. Respect of homage.

And the value of such Landes and Hereditaments not exceeding the yearely value of xx. l. shall bee taken as it is limitted in the offices founden thereof, except by the examinations and certificate of the said master, Surueyour, Atturney, or Receiuor, or three of them, it shall otherwise

otherwise appeare and be declared in any of the Kings courts.

Also no Escheatour shall sit onely by vertue of his office, for enquirie of the tenure, title or value of any lands or other hereditaments holden of the King being of the yearely value of v. l. or aboue, without the kings writ to him directed, vpon paine to forfeit v. l for euery time he shall so doe. Neither shall he take for the finding of any office of lands not exceeding the yearely value of v. l. aboue xv. s. that is to say vj. s. viij. d. for his owne fee, and iij s. iiij d. for the writing of the office. And for the charges of the Iurie iij s. And for the officers that shall receiue the offices in any court of Record ij. s. vpon paine that the Escheator doing otherwise, shall for euery time forfeit v l. And vpon like paine the officers of euery Court of Record where such inquisitions shall be returned, being offred vnto them within one moneth next after the finding thereof, shall receiue them. The one moytie of all which forfeitures to the King, and the other to the party that will sue for the same.

Pain of forfeit.

Fees of office.

And they which hereafter shall be in case to sue Liuerie, whose lands and tenements exceede not the yearely value of fiue pound, may lawfully sue forth that general liuery by warrant from the said Courts as is aforesaid, although none other inquisition be thereof had nor certified, paying neuertheless the fees aboue remembred.

Finally, euery person shall sue forth his patent for his liuerie, within three months next after the assignement of his bill, or else his bil assigned to be void, and of none effect.

Hereafter

Hereafter enſueth the fees accuſtomed of the generall Liueries.

FIrſt to the Clerkes of the petty bagge, for the reſpect of homage and fealtie, the writing and inrolling xiij ſ ij d. to the Lord great Chamberlaine, xl ſ. To the Maſter of the Rolles iij l. To the Clerkes of the Liueries for writing of the Indentures and Obligations xx ſ. beſide counſell.

The fées of the ſpeciall Liuerie accuſtomed to be payd, be thoſe following, that is to ſay, for the Signet, iij l. x ſ. For the priuie ſeale xxx ſ. For the great ſeale xliij ſ. viij d. To the Clerkes of the petty bagge, xl ſ. To the Maſter of the Liueries Clerkes xl ſ. For inrolment of the knowledge of the Indenture xij ſ. To the Lord great Chamberlaine of England xl ſ. For the writ of the allowance for the ſame Liuerie x ſ vj d.

And note yée, that ſometime in eſpecial caſes the fées be more, and ſometime leſſe, as the caſe and matter doth require.

Hitherto haue we briefely touched all kinds of knights ſeruice, and things incident to the ſame. Now will we with like briefenelle declare the other kinds of ſeruices which commonly be comprized vnder the generall name of Socage. For all lands or tenements either they be holden by knights ſeruice, or elſe by ſocage tenure, or at leaſt by the nature of ſocage tenure, which in effect is all one. Wherfore firſt we ſhal define what ſocage is in the proper ſignification: which done, we ſhall perule the other kinds of ſeruice which be of the nature of ſocage tenure.

Chap. 31.

What ſocage tenure is.

SOcage is properly where the tenant is bound to come with his ſoke, that is, with his plowe to eare and ſowe a parcell of the demean lands of his Lord, which ſeruice in auntient time was very common, but now by the mutuall conſent, both of the Lord and the tenant, it is conuerted for the moſt part into a yearely rent. Howbeit, the name of Socage abideth ſtill. Wherefore now, all that is not knights ſeruice is called by the name of Socage. So that if a man holdeth by fealtie only, or by fealty and homage for all manner of ſeruice, it is but ſocage tenure, for homage alone maketh not Knights ſeruice. Alſo if a man holdeth by Eſcuage certaine, as I haue ſaid heretofore, he holdeth in effect but by ſocage.

Gardeine in ſocage.

Now whereas a man holdeth his Landes by Socage and dyeth, his heyre being within the age of fourteene yeares, the Lord ſhall not haue the Ward, but the next of kinne to the heyre, to whom the heritage cannot deſcend, ſhall haue the tuicion and Wardſhippe, as well of the Land, as of the heire, till the heire come to the age of fourteene yeares. And ſuch tutor or gardeine is called gardeine in ſocage, and ſhall render accounts to the heire, of the iſſues and profits that he hath receiued of the landes during ſuch time, deducting his reaſonable coſtes and expences: ſo that he ſhall not haue the wardſhippe to his owne vſe and profit: as the Lord which is gardeine in chiualry hath.

And in caſe the gardeine in Socage dyeth before he hath made his accompt, the heire is without

out remedie, because no writ of account lieth against the executors but for the King onely.

Finally, ye shall understand, that when tenant in Socage dyeth, the Lord of whom the land is held shall haue relefe, that is to say, the value of the rent that is yearely due vnto him of the tenancy, beside the yearely rent, so that in effect after the death of his tenant, he shall haue of the heire two rents, saue that for the relefe he may distraine forthwith, but for the accustomed rent he cannot distraine till the vsuall day of payment be come. Rent. Distresse.

Franke almoigne. Chap. 32.

TEnant in Franke almoigne, that is to say in fee Almes, is where a Bishop, Deane, or any other Ecclesiasticall person holdeth of his Lord in pure and perpetuall Almes, and such tenure began first in old time after this manner. When a man was seised in antient time of certaine lands and tenements in his Demesne, as of fee, and of the same tenements infeoffed an Abbot and his Couent, or a Prior and his Conent, or any other person Ecclesiasticall, as a Deane of a Colledge, Maister of an Hospitall, or such like, to haue and to hold the same lands to them and to their successors for euer, in pure and perpetuall Almes, or in Franke almes, in these two cases the tenements shall be holden in Franke almoigne. The first foundation of franke almoigne.

By force of which tenure, they that hold in Franke almoigne after this sort, be bound of

right before God, to make orisons and prayers, and to do other diuine seruices for the soules of their grantors and feoffors, and for the soules of their heirs which be dead, and for the prosperous estate of them and their heires, whilst they be aliue. And because of right they be bound to this diuine seruice, they be discharged by the law to do any other prophane or corporall seruice, as fealtie, or such other like.

Tenant in franke almoigne shal doe no fealtie.

But nerthelesse, if such as hold their tenements in frank almoigne, do omit and leaue vndone these Diuine seruices whereunto they bee bound before God, the lord cannot distraine them ne yet compell them by any other meanes by the course of the common law: but the onely remedy is to complaine of them to their Ordinary, who of right ought to compell such Ecclesiasticall persons to do the diuine seruice due as afore said.

Tenant by diuine seruice.

But here ye shall note, that if a Parson of a Church or any other Ecclesiasticall person, did before the statutes of dissolution of Abbeis, Monasteries, &c. hold of the Lord by certaine diuine seruice to be done, as to sing masse euery holyday in the weeke, or Placebo and Dirige, or to finde a priest to sing masse, or to distribute in almes C.s. to a hundred men at such a day, in all these cases if such diuine seruice be vndone, the Lord may very well distraine, because the seruice is put here in certaine.

Distresse for diuine seruice.

Now as I said before, if in old time a man did intoffe such Ecclesiasticall persons after such sort, he should hold his lands in Franke almoigne. But at this day it is otherwise: for by the reason of the statute called, Quia emptores terrarum

terrarum, Westm. 3. cap 1. No man can alien, ne graunt lands or tenements in fee simple, to hold of himself, so that now if a man being seised of lands in fee simple, graunteth the same by licence to an Ecclesiasticall person in franke almoigne, these words franke almoigne be void, and the Ecclesiasticall person shall hold them immediatly of the Lord of the feoffor by the same services that the feoffor held, so that no man can hold in franke almoigne, but by force of a graunt made before the said statute, only the kings majesty excepted, for he is out of the compasse of the statute.

Finally yee shal note, that whereas a man holdeth in frank almoigne, the Lord is bound by the law to acquite him of all manner of service that any other Lord can have or demand out of the said lands, so that if he doth not acquite him, but suffer him to be distrained, then he shal have against his Lord a certaine writ, called a writ of Meine, and shall recouer against him his damages and costes for his suit. Writ of Meine.

Of Burgage, Chap. 33.

A Tenure in Burgage, is where an auntient borough is, of which the King is Lord, & they which have tenements within the same Borough, hold the same of the king, paying a certain yerely rent, which tenure in effect is but socage tenure. Likewise it is, whereas any other Lord, spirituall or tempozall, is Lord of such borough. Socage tenure.

Here ye shall note, that for the most part such auncient Boroughes and Townes have diuers Customes and vsages, which other Townes Custome.

haue not. For some boroughs haue a custom, that the youngest sonne shall inherit before the eldest, which custom is called commonly Borough English.

Power by custome.

Also in some Borough by the custome, the woman shal haue for her dowrie all the lands and tenements whereof her husband was seised at any time during the matrimonie and couerture.

Deuise by custome of Borough.

Moreouer in some Boroughs a man may bequeath or deuise his lands or tenements by testament at the time of his death, and by force of such deuise or legacie, he to whom the bequest is made, after the death of the testator which made such testament, may by force of this auncient custom enter into the lands so to him bequeathed or deuised, without any liuerie of seisin to him made, or further ceremonie of law.

Howbeit, how and in what manner a man may at this day deuise his lands by his last will and testament, by force of a certaine new Statute, it shall be hereafter declared.

Diuers other customes in England there be, contrary to the course of the common law, which if they be any thing probable, and may stand with reason, are good and effectuall, notwithstanding they be against the common law.

And note, that no custom is allowable, but such custome as hath been vsed by title of prescription, or time out of mind.

Of Villenage, or bond seruice.

Chap. 34.

A Tenant in Villenage is property, when a Villaine, that is to say, a Bondman holdeth of

of his Lord, whoſe bondman he is, certaine lands or tenements, according to the cuſtome of the manor, or otherwiſe at the will of his Lord, and to do his Lord villaine ſeruice, as for to beare and carrie the dung of his Lords out of the Citie, or out of his Lords manor, and to lay it vpon the demeſne lands of the Lord, or to do ſuch like ſeruice and villaines ſeruice. Howbeit, freemen in ſome places hold their tenements and lands of their Lords by cuſtome, by ſuch ſort of ſeruice, & their tenure is called tenure in villenage, and yet they themſelues be no villaines, ne of ſeruile condition, but freemen. For the land holden in villenage maketh not the tenant a villaine, but contrariwiſe, a villaine may make free land to be villaine land vnto his Lord. As if a villaine purchaſeth land in fee ſimple, or fee taile, the Lord of the villaine may enter into the land ſo purchaſed by the bondman, and put him and his heires out for euer: and this done, the Lord, if he will, may leaſe the ſame land to his villaine, to hold of him in villenage.

And here ye ſhall vnderſtand, that ſeruitude or villenage is the ordinance, not of the Law of nature, but of the law, which is called Ius gentium, by which a man is made ſubiect contrarie to nature, vnto another mans dominion. For he that is a villaine or bondman, either he is ſo by title of preſcription, that is to ſay, he and his anceſtors haue béene villains time out of mind, or elſe he is a villaine by his owne confeſſion in ſome Court of Record: ſo that all villaines, either they be borne villaines, or elſe they be made ſo. They be

borne villaines, when their father being a bondman himselfe, begetteth them in lawfull wedlock, either of a free woman, or of a bond woman, for so that the father be bond, the issue of him lawfully begotten, must needs be bond by the Lawes of England, having no regard to the condition of the mother, whereas in the ciuill law of the Romans it is cleane contrary: for there, partus sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the child bond, and not the bondage of the father. Howbeit, the bastard sonne of a bondman shall not be bond, and the reason is, because a bastard is Nullius filius in the law, that is to say, no mans sonne.

Bastard.

They be made bondmen or villains two waies, either by their owne proper act, as when a free person being of full age, will come into a Court of Record, and there confesseth himselfe bond to another man.

Or else by the Lawes of Armes called Ius gentium, as when a man is taken prisoner in wars, and is compelled to serue and become the thrall and bondman of him that toke him, the Law calleth such a person a villaine, that is to say, a slaue and thrall.

Diuision of Villaines.

And ye shall note, that villaines be properly called in Latine Serui, because that when they be taken in warre, the Captaines be wont not to kill them, but to sell them, so to saue their liues, so that they be called Seruia seruiendo, that is to say, of seruing. They be called Mancipia a manu capiendo, because they be taken by hand & power of their enemies.

Now

Now as I said, by the law of Nature we are borne free, but after that by the law of Gentiles, seruitude or bondage did presse and inuade the world, then ensued the benefit of Manumission. Manumission is, quasi de manu emissio, that is to say, a giuing out of the hand or power. For so long as a man is in bondage and seruitude, he is subiect to the hand and power of another, and when he is manumissed, he is made free, and deliuered from the said power: so that a manumission is to say, a writing testifying that the Lord hath infranchised his villaine, and all his off-spring and sequell. Manumission.

Also if the Lord maketh to his bondman an obligation of a certaine summe of monie, or granteth to him by his deed an annuitie or perely pension, or leaseth to him by deed lands or tenements for terme of yeres, any of these acts do imply an infranchisement. What acts maketh Manumission in law.

Likewise, if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of seisin, this also is an infranchisement & secret Manumission. Briefly to speake, wheresoeuer the Lord compelleth his villaine by the course of the Law to do that thing that he might otherwise inforce him to do, or to suffer, without the authoritie and compulsion of the law, he doth by implication infranchise his villaine: as if the Lord will bring against his villaine an action of Debt, an action of Account, of Couenant, or of Trespas, these & such like be in the eie of the law infranchisements & manumissions, because that the Lord in all these cases may haue the effect and purpose of his suit, Causes of infranchisement.

that

that is to ſay, the goods, cattels, and correction of his bondman, without the compulſion of the law, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth ſue his villaine by an appeale of felonie, the villaine being lawfully indicted of the ſame before, this is no tacite manumiſſion or infranchiſement, for the Lord though he haue power to beat his villaine, and to ſpoyle him of his goods, yet he cannot by the Law of this Realme put him to death.

Ye ſhall alſo vnderſtand, that if a mans bondman purchaſe lands, or acquire and get vnto him any other thing, the Lord may forthwith enter and ſeiſe the ſame into his owne hands. Wherefore if the Lord will bring againſt his villaine a Præcipe quod reddat, by which he demandeth againſt his villaine any lands or tenements, this implyeth an infranchiſement, foraſmuch as he bindeth himſelfe to the preſcript and authoritie of the law, whereas he might vſe his owne authority by entring and ſeiſing the ſaid lands.

Finally, ye ſhall marke, that ſome villaines be called villaines in groſſe, and other ſome be called villaines regardant. In groſſe be they of which the Lord is ſeuerally ſeiſed, and not by reaſon of any Lordſhip or manor: but they be called regardant, which do belong to a manor of which the Lord is ſeiſed, and the ſaid villaines haue bin regardant, that is to ſay, expectant and attendant, time out of mind, to the Lord of the ſaid manor, in doing vnto him ſuch ſeruices as to a villaine appertaineth.

Of

Of ancient demeſne. Chap. 35.

THere is alſo a certaine kind of tenure, which is called antient demeſne, and thoſe tenants which hold by this ſeruice, be freeholders & by charter, and not by copy of Court Roll, or by the Verge, after the cuſtome of the manor, or the will of the lord. And theſe tenants be ſuch as hold of thoſe manors which were S. Edwards & king or which were in the hands of K. William the Conqueror: and theſe manors be called the antient demeſnes of the king, or the antient demeſnes of the Crowne of England And to ſuch tenants which hold of ſuch manors, be many and diuers liberties giuen and granted by the law, as to bee quit of toll and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels, ſold or bought in faires or markets by them: alſo to be quit and free of tare and tallage graunted by Parliament, except that the Kings Maieſtie do tare antient demeſne, as to him only appertaineth when he thinketh good for great and vrgent conſiderations. Tenants alſo of antient demeſne ought to be quit of payments to the expences and charges of the Knights which come to the Parliament, alſo they ought not to be impanelled nor put in Iuries and Enquests in the countrey, out of their manors or ſeigniorie of antient demeſne, for the landes which they hold of ſuch manor, vnleſſe they haue other lands at the common law, for which they ought to be charged. And if ſuch tenants, or any of them which hold of the manor of antient demeſne, be diſtrained to doe

vnto

vnto their Lord other ſeruices and cuſtoms then they or their Anceſtors haue vſed to doe, then may they ſue a certaine writ called a Monſtrauerunt, directed to the Lord, commaunding him that hee diſtraine them not for to doe other ſeruice or cuſtomes than they haue bẽ accuſtomed to doe.

Writ of Monſtraueruunt.

And for further knowledge hereof, ye ſhall vnderſtand that in the Exchequer there is a Booke called Domeſday, which booke was made in the time of the ſaid S. Edward. And all the landes that were in the ſeiſin, and in the hands of the ſaid S. Edward at the time of the making of the ſayd booke be antient demeſne.

But the lands which then were in other mens hands, though they be written in the ſaid booke, be franke fée, and no antient demeſne.

Frank fee.

Finally it is to be noted, that tenants of antient demeſne, ſhall not be impleaded for their ſaid lands out of the manor whereof they ſo hold, and if they be, they may ſhew the matter and abate the writ. But if they once anſwere to the writ, and iudgement giuen, then the lands haue loſt the nature & benefit of antient demeſne, and are become franke fée, that is to ſay, pleadable at the common Law for euermore. And thus haue we ſpoken of the diuerſitie of Tenures.

Abatement of a Writ.

Of Rents. Chap. 36.

FOraſmuch as vpon euery Tenure there is commonly reſerued one rent or other, therefore I thinke it good ſomewhat to treat of Rents. But ye muſt vnderſtand, that there be ſundry

sundrie sorts of rents. There is one kinde of rent which is called rent seruice. Another which is called Charge, and the third which is named in French, Rent seke, that is to say in Latine, Redditus siccus a drie rent. Now rent seruice is so called, because it is knit to the tenure, and is as it were a seruice whereby a man holdeth his Landes or Tenementes, or at the least way when the rents be vnseuerably coupled and knit with the seruice: as for an example, where the tenant holdeth his Land of the King, or of any other Lord by fealtie and by certaine rent, or by homage, fealtie, and by certaine rent, or by any other sorts of seruices and by certaine rent, this rent is called rent seruice. And here you shall note that if this rent seruice be at any time when it ought to be payed, behind and vnpayed, the Lord of whom the land or tenement is so holden, whether it be in fée simple, fée taple, or for terme of life for yeares, or at will, may of common right enter and distrain for the rent, though there be no mention at all, ne clause of distresse put in the deede or lease. I said before that the nature of this rent seruice is to be coupled and knit to the tenure. For where no tenure is, there can bee no Rent seruice. And therefore if at this day I be seised of landes of fée simple, and make a deede of feoffmene of the same to another in fée simple, reserving by the same deede a rent, this can be called no Rent seruice, because there can bee now no tenure betweene the Feoffour and the Feoffée. Otherwise it is of feoffments in fée simple made before the Statute of Westminster the third, Cap. primo, called Quia emptores terrarum.

Diuision of rent seruice.

Distresse of common right.

For

For before the making of that Statute, if a man had made a feoffement in fee simple, reseruing to him a certaine rent, yea though it had beene without deede, there had been begun and created a new tenure betweene the feoffor and the feoffee, and the feoffee should haue holden of the feoffor, who by vertue of the same might of common right haue distrained for such rent But at this day by force of the said act there can be no such holding or tenure created or begun, and consequently, no rent seruice can bee at this day reserued vpon any gift in fee simple, except it be in the kings case, who being chiefe lord of all, euer might and may, giue lands to be holden of him. Thus ye see, that at this day, no subiect can reserue any rent seruice vnto him, vnlesse the reuersion of the lands or tenements that he shall grant, bee still to him, as where he graunteth them in fee taile, or maketh but a lease for terme of life, or for certaine yeares, or else at will.

For in all these cases the reuersion of the fee simple remaineth still in him, and therefore if there be any rent reserued, it is to be called a rent seruice, and is of common right restreinable, though there be no clause of distresse in the deed of feoffement or lease.

But here ye will aske me, when in the case before remembred, a man at this day giueth cleane away the land or tenement from himselfe in fee simple, so that there is no manner of reuersion of the same remaining in him at all, and yet neuertheless reserueth vnto him by his deede a certain rent, what maner of rent shall this be called. I answere, if there bee in the deede indented any clause

clause of distresse, that is, that if the rent be behind vnpayed, it shall be lawfull for the feoffor to enter, and to distraine it is called a rent charge, for as much as the land is charged therewith, but how? of common right? no, but only by vertue and force of the writing. But on the other side, if there be no such clause of distresse put in the Indenture, then the rent so reserued shall be called a rent secke. Charge.

Likewise if a man that is seised of certaine lands, will grant either by indenture, or by deede Poll, that is to say, single, and not indented, a yearely rent out of the same lands to another, whether it be in fee simple, fee taile, or for terme of life, for yeares, or at will, with clause of distresse, then this rent is called a rent charge, and he to whom such rent is graunted, may for default of payment thereof enter and distraine. But contrarie, if the graunt be made without any such clause of distresse, it is called a rent seck, that is to say, a dry rent, because he cannot come to it, in case it be denyed by way of distresse, in so much that if he were neuer seised of it, he is by the course of the common law without remedie. Otherwise it is of a rent charge, for here hee to whom the graunt is made when the rent is behind, may chuse whether he will sue a writ of Annuitie against the grantor, or distraine for the rent behind, and retaine the distresse, till the time he be payed accordingly. But he cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuitie then is the Land discharged. And if he sue not his writ of Annuity but distraine for the arrerages, and the tenaunt Annuitie.

sueth

saeth a repleuin, whereupon the other answeth the taking of the distresse in court of record, then
Estopopel. is land charged, and the person of the grauntour discharged of the act of Annuitie.

Ye shal also vnderstand, that if a man will that another shall haue a rent charge comming out of his land, and yet will not that his person shall be by any meane charged by writ of Annuitie, hee may then haue such clause in the end of his deede.
Proviso quod præsens scriptum, nec quicquam in
Prouiso. eo contentum vllo pacto se extendat ad onerand personam meam, per breve sed actionem de annuitate, sed tantummodo valeat ad onerandum terras, fundos, & tenementa mea, de annuo redditu prædicto. If this or such like clause bee added, then the land is charged, and the person of the grantor discharged.

Also if a man will make a deed of grant in this wise, that if John at Stile be not yearely payd at the feast of Christmas for terme of his life xx. s. sterling, that then it shall be lawfull for the said John at Stile, to distraine for it in the manor of Dale, this is a good rent charge, because the manor is charged with the rent by way of distresse, and yet nevertheless in this case ỹ person of him that made such deed is discharged of an action of annuitie, forasmuch as he granted not by his deed any annuitie to the said John at Stile, but onely granted that he might distraine for yearely rent.

Furthermore, ye shall note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and doth purchase any parcell of these lands, to him and to his heires, in this case the whole rent charge is quenched *and*

gone

gone, and the annuitie also, the cause is this, that a rent charge cannot be in such case apportioned. Otherwise it is of a rent seruice, as for example, if one which hath a rent seruice of xx. s. by yeare, doth purchase parcell of the land, out of which this yearely rent of xx. s. is comming, this shall not extinguish or drowne the whole rent, but for the parcell onely. For rent seruice in such a case may very well be apportioned and rated according to the value of the land. Yet there bee some sorts of rent services, which in no wise can bee apportioned. As where a tenaunt holdeth his land of his Lord by the seruice, to render to the Lord yearely at such a feast, an horse lading of gold, a red horse, a gyrfaulcon, or such like, if in this case the Lord doth purchase parcell of the Land thus of him holden, this seruice is gone, because such seruice cannot be seuered and apportioned. Also escuage is a seruice that may be very well apportioned, according to the difference and rate of the land.

Extinguishment.

Rent seruice cannot be apportioned.

But where any land is holden by homage and fealtie, if the Lord purchase parcell of the Land, yet he shal haue his homage and fealtie still of his tenant.

Ye shall marke also, that if a man maketh a lease of lands to another for terme of life, reseruing to him certaine rent, if in this case he granteth that rent to John at Stile, sauing to himselfe the reuersion of the said land, this rent is but rent secke, because John at Stile that hath the rent, hath nothing in the reuersion of the Land.

But if he granteth the reuersion of the land to

John at Noke for terme of life, and the tenaunt atturneth accordingly, then hath John at Noke the rent as rent seruice, because he hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is, if a man giueth landes or tenements in tayle, reseruing to him and to his heires certaine rent, or maketh a lease of the Land for terme of life, reseruing certaine rent, if he graunteth the reuersion to another, and the tenaunt atturneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case be incident to the reuersion and do passe by the grant of the reuersion. But if he had granted the rent onely, it had beene a rent secke.

What remedie a man hath to recouer his Rent when it is behind. Chap. 37.

I Shewed you before, that for a rent seruice if it be behind, ye may distrain in the ground, euen of common right, though there be no such clause of distresse mentioned in the deede of feoffement, grant, or lease.

Also for a rent charge ye may distraine, or bring your writ of annuitie, at your choice and election, as before is declared. But of a rent secke if ye were neuer seised of it, nor of any parcell thereof, ye bee without remedie by course of the common law, for ye cannot distraine for it, nor yet bring your writ of annuitie: but if ye were once seised of it, or of parcel thereof, and it is eftsones behind then

then your remedie shall be this, ye must goe either by your selfe, or by your deputie to the land or tenement out of which the rent is comming, and there demand the arerages of the rent, which if the tenant deny to pay, this dentall his disseisin of the rent. Also if the tenant be not then readie to pay it, this counteruaileth a dentall which is a disseisin. Disseisin of rent secke.

Moreouer, if neither the tenant nor no other man be remaining vpon the ground to pay the rent when ye demand the arerages, this also is a dentall in the law, and is in very deed a disseisin. And for these disseisins ye may haue an Assise of Nouel disseisin against the tenant, and shall recouer seisin of the rent, and the arerages and your damages and costs of your writ, and of your plea. And if after such recouerie and execution had, the rent be againe at another time denied you, then ye may haue a writ of Rediisseisin, and shall recouer your double damages, &c. Assise. In rediisseisin double damages.

It shalbe therefore wisdome for a man when a rent is granted by any person vnto him, to take of the tenaunt of the land a penie or a halfe peny in name of seisin of the rent, and then if at the next day of payment the rent be denied him, hee may haue an assise of Nouel disseisin. And ye shal note that there be three causes of disseisin of rent seruice, that is to wit, rescous, repleuin, and inclosure. Rescous is, when the Lord vpon the land holden of him distraineth for the rent behind, and the distresse be rescued from him, or if the Lord come vpon the land to distraine, and the tenant or any other man for him will not suffer him, that is called Rescous. Three causes of disseisin of rent seruice.

Repleuin.

Repleuin is, when the Lord hath distrayned and repleuin is made of the distresse by writ, or by plaint.

Encloſure.

Encloſure is, where Landes or tenements be ſo incloſed, that the Lord cannot come within the landes or tenements for to distraine. And the chiefe cauſe why ſuch things ſo made be diſſeiſin to the Lord, is forasmuch as the Lord is by this way diſturbed of the meane and remedie whereby he ought to come and haue his rent, that is to wit, by diſtreſſe.

Foure cauſes of diſſeiſin of rent charge.

And there bee foure cauſes of diſſeiſin of rent charge, that is to wit, reſcous, repleuin, incloſure, and denier. For denier, or deniall, is as well a diſſeiſin of a rent charge, as it is of rent Seeke.

And two of rent ſecke.

Finally, ye ſhal vnderſtand, that there be two cauſes of diſſeiſin of rent ſeeke, that is, denial, and incloſure.

And it ſéemeth that there is yet another cauſe of diſſeiſin of all the three rents aforeſaid, that is to wit, this: when the Lord commeth to the land holden of him, or when he that hath a rent charge or a rent ſecke, commeth to the land to diſtraine for the rent behind, or to demand the rent, and the tenant hearing this, encountreth him, and foreſtalleth him the way with force and armes, and menaſteth him in ſuch ſore as he dare not come to the ground for to diſtraine for his rent behind, for feare of death or mutilation of his members, this is a diſſeiſin, becauſe the partie is diſturbed of his meane, & lawfull remedie whereby he ought to come to his rent.

Finally, ye ſhall obſerue and marke, that by an act of parliament made in the 22. yere of our Soueraigne Lord K. Henrie the eight, it is lawfull for

for the executors and administratours of tenants in fee simple, tenants in fee taile, tenants for term of life, of rent services, rent charge, rent secks, and of fee farmes, for arrerages of such rents as were due vnto their testators in their liues, eyther to distraine for the same, or at their election to bring an action of Debt, except in such Lordships in Wales, or in the Marches thereof, whereas the tenants haue vsed time out of minde to pay vnto euery Lord at his first entrie into the Lordship any summe of money for the redemption of all manner of outeries & penalties incurred at any time before the Lords entrie. Distresse, or action of debt.

Also by force of the said act, the husband which was seised in the right of his wife, may after the death of his wife, either distraine, or bring an action of debt for the arrerages of such rents as were due and vnpaied in her life.

Likewise it is of him that hath a rent for terme of another mans life: if he for terme of whose life he hath the rent dyeth, yet by vertue of the sayd Act, he or his executors and administratours, may either distraine or bring an action of Debt for the arrerages due before the death of him, for terme of whose life he had the rent.

How auowries ought to be made of Rents and Seruices, enacted An. 21. H. 8. Chap. 38.

WHere any lands be holden of any person by Rents, Customes, or Seruices, if the Lord distraine vpon the same lands for any such Rents, Customes, or Seruices, and Replevin thereof be sued, the Lord may

anowe, or his bayliffe or seruant may make conisance, or iustifie the taking vpon the same Lands, as within his fee and seignorie, alledging in the said anowrie, conisance, or iustification, the same lands to be holden of him, without naming any person certaine to be tenant of the same, and without making any anowry, iustification, or conisance vpon any person certain. And likewise vpon euery writ ioined of the second deliuerance. And they that make any such anowrie, iustification, or conisance, if the same anowry, conisance, or iustification be found for them, or the plaintif be nonsute, or otherwise barred, then they shall recouer their whole damages and costs.

Also the said plaintifs and defendants shal haue like plees, and one aid vter (plees of disclaimer only except) as they might haue had before the making of this act.

Plees in anowrie.

Also such persons as by the common law may ioine to the plaintif or defendant in the said writs of Replegiare or second deliuerance, as wel without Proces as by Proces, shall from henceforth also in this case ioyne vnto them, as well without Proces as by Proces, and haue like plees and like aduantages in all things (disclaimer only except) as they might haue by the common Law before this act.

An act for the assurance of Farmers, made An. 32. Hen 8. Chap. 39.

ALl Leases hereafter to be made of any lands or other hereditaments, by writing indented vnder seale, for terme of yeares or for terme

or

of like, by any persons being of the age of 21. yeres having an estate of inheritance, either in fee simple, or in fee taile, in their owne right, or in ꝯ right of their Churches, or wiues, or iointly with their wiues, shal be good & effectuall against the lessors, their wiues, heires, and successors, according to the estate comprised in such Indenture or lease.

Prouided, that this act shall neither extend to any leases to be made of any lands, or hereditaments, being in the hands of the farmors, by vertue of any old lease, vnlesse the same old lease be expired, surrendred, or ended, within one yeare after ꝯ making of the new lease, nor yet to any grant to be made of the reuersion of any lands or hereditaments, or to any lease of such lands or hereditaments, as haue not commonly bin letten to farme by the space of 20. yeares next before such lease thereof made, nor to any lease to be made without impeachment of wast, nor to any lease to be made aboue the number of 21. yeres, or three liues at the most from the day of the making thereof. And that vpon such lease be reserued yerely during ꝯ same, due and payable to the lessors, their heires & successors, to whom the land should haue come after the death of the successors, and to whom the reuersion thereof shall pertaine, according to their estates and interests, so much yerely rent or more as hath bene accustomably yelded for the same within 20. yeares next before such leases, & that he to whom the reuersion thereof shall appertaine, after the death of such lessors, or their heires, shal haue such like remedy and aduantage against their farmors thereof, their executors & assignes, as the lessor himselfe should haue had.

The wife shalbe partie to the Lease.

Provided also, that the wife be made party to euery such lease as shall be made by her husband of any lands being the inheritance of the wife, and that euery such lease be made by Indenture in the name of the husband and his wife, and shee to seale thereunto. And that the rent be reserued to the husband and wife, and to the heires of the wife, according to her state of inheritance therein. And that the husband shall in no wise alien, discharge, graunt, or giue away the same rent reserued, nor any part thereof, longer than during the couerture, without it be by fine leuied by the said husband and wife.

Prouided furthermore that this act extend not to giue libertie or power to any persons to take any more farmes, leases, or taking of any lands or other hereditaments, then they might haue done before the making of this act: nor yet extend to giue any libertie to any Parson or Vicar of any Church or Vicarage, for to make any lease or graunt of any of their messuages, Landes, tenements, tithes, profits or hereditaments, belonging to their Churches or Vicarages, otherwise then they might haue don before the making hereof. Anno 32. H. 8.

What grant by a Corporation is good.

It is furthermore enacted, that the graunt, lease, or gift, or election of the Gouernor or Ruler of any Hospitall, Colledge, Deanry, or other Corporation, with the assent of the more part of such of the same as haue voice thereunto, shall be good and effectuall, any Rule or Statute made by any Founder to the contrary notwithstanding.

Of

Of falsifying of the recoueries by Farmors, enacted An.21.H.8. Chap.40.

ALl Farmors or Lessées for terme of yéres may falsifie for their terme onely recoueries had by fained titles, as wel as tenãts in frée hold. And the same farmors, their executors and assignes, shal enioy their said termes, according to their leases, against such recoueries, euen as if none such had beene suffered. In which case neuertheleſſe the recouerer, after such recouerie had, shall haue like remedie against the farmors, by auowrie, or action of debt, for rents and seruices reserued vpon the same leases, being due afore the same recoueries, and like actions for wast done after the same recoueries, as the Lessour might haue had, if no such recouerie had beene had. Furthermore, no Statute Staple, Statute Marchant, nor execution by Elegit, shall be auoyded by any such fained recouerie, but like remedie shal be had to auoid and falsifie the said recouerie, as is ordained for the Farmour or Lessee for terme of yeares.

Auowrie, or action of debt.

Of Tithes, and how they shall be recouered, enacted An.32.H.8. Chap.41.

ALl persons shal truly pay their Tithes and Offrings, according to the lawful customs and vsages of parishes and places where such Tithes or Duties be due. And if they doe wilfully withhold any parcell of them, the party, whether

whether he be Eccleſiaſticall, or lay, that ſhould haue them, may conuent ſuch perſons before the Ordinarie, his Commiſſarie, or other competent minister or Iudge of the place where ſuch wrong ſhalbe done, according to the Eccleſiaſtical lawes. And in euery ſuch caſe or ſuit, the ſame Ordinary or Iudge hauing the parties or their procurator before him, ſhall proceed to the determination thereof ordinarily or ſummarily, according to the courſe of the ſaid Lawes, and thereupon ſhall giue ſentence according.

And in caſe any of the parties of any matter concerning that ſuit do appeale from the ſentence and definitiue iudgement of the ſaid Iudge, then the ſame Iudge forthwith, by ō appellation made, ſhall adiudge to the other party the reaſonable coſts of his ſuit, and ſhall compell the ſame party appellant to pay the ſame by compulſarie proceſſe and cenſure of the ſaid lawes, taking ſurety of the other party to whom ſuch coſts ſhal be adiudged, to reſtore the ſame to the appellant, if afterward the principall cauſe of that ſuit of appeale ſhall be adiudged againſt him. And ſo euery Iudge Eccleſiaſticall ſhal iudge coſts to the other party vpon euery appeale to be made in any ſuit or cauſe of ſubtraction or detention of any tythes or offering, or in any other ſuit to be made concerning duties of tythes or offerings.

And if any perſons after ſuch ſentence giuen againſt them, ſhall obſtinately refuſe to pay their tythes, or duties, or ſuch ſummes of money ſo adiudged wherein they be condemned, then two Iuſtices of the Peace of the ſame Shire, whereof one

one to be of the Quorum, shall vpon certificate or complaint to them made in writing by the Iudge that gaue the sentence, cause them to be attached and committed to the next gaole, there to remaine without bayle or mainprise, till they shall haue found sufficient sureties to be bound by recognisance, or otherwise, before the same Iustices, to the Kings vse, for the performance of the sayd iudgement.

Prouided, that no person shall be sued or otherwise compelled to pay any tythes for any Lands, tenements, or hereditaments, which by the lawes of this Realme are discharged, or not chargeable with the payment of any such tythes.

Also this act shall in no wise bind the inhabitants of London, and suburbs of the same, to pay their tythes and offerings within the same Citty and suburbs, otherwise then they should haue done before.

Furthermore, if any hauing an inheritance, freehold, terme or interest, in any Parsonage, Vicarage, Portion, Pension, Tythes, Oblations, or other Ecclesiasticall profit, made or to be made temporall, or admitted to be in temporall handes by the Lawes or Statutes of this Realme, be disseised or otherwise put from the same, or any other person clayming to haue interest therein, the person so disseised, or wrongfully put from his sayd right or possession, his heire, wife, and other to whom such wrong shall be done, may haue remedie in the Kings temporall Courts, as the case shall require for the recouerie thereof, by writs originall of Præcipe qđ reddat, assise of Nouel disseisin, Mortdancester, Quod ei deforceat, writs

of

of dower, or other writs originall to be graunted in the Chancery, of euery such Parsonage, Vicarage, portion, pension, or other profit Ecclesiasticall, according to the nature of the suit thereof. And writs of couenant, and other writs for fines to be leuied, and all other assurances to be made of any such Parsonage or profits Ecclesiasticall, shall be deuised and granted there like as hath bin vsed for fines to be leuied, and assurance to be had of lands or other hereditaments, and all iudgments giuen vpon such writs originall granted for any the premisses, and all fines leuied & knowledged in any of the Kings said Courts thereof, shalbe of like force as iudgment giuen, and fines leuied of lands, tenements, and hereditaments.

Of Mortuaries, enacted An. 21 H. 8. Chap. 42.

NO person spirituall, their farmors or Bailifes, shall call any person before the Iudge Spirituall, for the recouery of of any Mortuaries, more then is hereafter mentioned, vpon paine to forfeit for euery time so much in value as they shall take aboue the summe here limitted, and ouer that 40. s. to the party grieued, for which hee shall haue an action of Debt, by writ, Bill, or Information, wherein no wager of Law, Essoigne, nor Protection shall be allowed.

First, no Mortuary shalbe taken of any which at his death hath in moueable goods vnder the value of ten markes. Also no Mortuarie shall be taken, but onely where Mortuaries haue beene vsed to be payed, and there after the forme hereafter mentioned. Nor in no moe places but one, that

that is to wit, there where his moſt abiding is, and there but one. For no perſon ſhall take for the mortuarie of any perſon being at his death, of the value of ten marks aboue his debts paid, and vnder xxx.l. aboue iij. li. iij. s. iij. d. And of the value of xxx.l. and vnder xl. not aboue vj. li. vij. s. And of the value of lx.l. or aboue, of any ſumme whatſoeuer it be, not aboue x. li.

Alſo no Mortuarie ſhall be aſked nor payd for any woman couert baron, or child, or any perſon not keeping houſe, or for any wayfaring man, but the mortuaries of ſuch wayfaring men be anſwerable in that place where they had their moſt dwelling at the time of their death.

Neuertheleſſe ſuch ſpirituall perſon may take any thing, which ſhal be diſpoſed or bequeathed to him, or to the high aulter of the church.

Alſo nothing ſhall be taken for Mortuarie in Wales, nor in the Marches of the ſame, nor in Calis or Barwick, or the Marches of the ſame, but onely in ſuch places of the ſame, where Mortuaries haue beene accuſtomed to be paid, & there but onely after the forme aboue ſpecified. Prouided that the Biſhops of Bangor, Landaffe, S. Dauids, and S. Aſſe, and the Archdeacon of Cheſter, may take ſuch mortuaries of the prieſts within their dioces and iuriſdictions, as heretofore haue beẽ accuſtomed. Prouided alſo, that in ſuch places where Mortuaries haue beene accuſtomed to be taken of leſſe value, none ſhalbe compelled to pay any other mortuarie, or more for any Mortuarie, then hath beene accuſtomed, nor no Mortuarie there ſhal be demanded of any perſon exempt by this act, vpon paine afore limitted.

Of

Of Discontinuance.

Chap. 43.

IT is called a discontinuance by the Lawes of England, where he that hath the possession of landes or tenements for the time present, and yet not hauing the fee simple in himselfe, nor in his owne right onely, maketh an alienation of the same to another, by reason whereof he that should haue them after him, and which then hath right vnto them cannot enter, but is driuen to his remedie by way of action, in such wise that the sayd lands be not vtterly shifted and gone from such person or persons as haue right vnto them, but be all onely discontinued for a time, till the person which after the death of such discontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by suit and way of action. As for example, a tenant in tayle of certaine lands doth infeoffe another in the same, in fee simple or fee tayle, and hath issue and dyeth, his issue cannot enter into the landes though he hath title and right vnto them, but is put to his action which is called a Formedon in the discender.

Formedon in the discender.

And if such tenant in tayle which maketh such a feoffement, hath no issue at the time of his death, it is yet neuertheleſſe a discontinuance to him which is either in the reuersion or in the remainder, so that neither the one nor the other can enter but be driuen to their action, hee in the reuersion to his Formedon in the reuerter, and he in the remainder to his Formedon in the remainder.

Formedon in the reuerter or remainder.

In like manner if a Bishop doth alien Landes which bee parcell of his Bishoprieke and dyeth, this

this is a discontinuance to his successour, forasmuch as he cannot enter, but is driuen to his writ of Entrie sine assensu Capituli.

Entrie sine assensu Capituli.

Semblable, if a deane be sole seised of lands in the right of his deanrie, and maketh such an alienation, this is a discontinuance to his successour. Also if the master of an Hospitall alieneth any lands of his Hospitall, that is a discontinuance, and his successour cannot enter, but is put to his writ, De ingressu sine assensu confratrum & sororum.

Ingressu sine assensu confratrum & sororum.

But if a parson, or a vicar of a church, will alien any of his glebe lands to another in fee simple or fee taile, and dyeth, or resigneth his benefice, this is no discontinuance to his successor, but hee may very well enter, notwithstanding such alienation made by his predecessors. And the highest writ that a Parson can haue, if his predecessour hath alened his glebe land, or lost it by default, or reddition, is a Iuris vtrum. And further more note that no tenant of the land can by his or their act, discontinue the right of him in the reuersion, vnlesse it be by feoffement with liuerie and seisin, or else by a release with warrantie.

And note, that such things as passe by way of grant by deed without liuery and seisin, cannot be discontented as an aduowson, common, or a villaine in grosse, reuersion, rent charge, common for beasts certaine, and such other like.

Also ye shall vnderstand, that in the 32. yeare of King Henry the 8. it was enacted, that no fine, feoffement, or other act to be made or suffered by the husband onely, of any landes or tenements, beeing the inheritance or freehold of his wife during

during the couertare betweene them, ſhould be any diſcontinuance thereof, or bee preiudiciall or hurtfull to the ſaid wife, or to her heires, or to ſuch as ſhould haue right, title, or intereſt to the ſame by the death of ſuch wife, but that the ſame wife, and her heires, and ſuch other to whom ſuch right ſhould appertaine after her deceaſe, may then lawfully enter into all ſuch landes and tenements, according to their rights and titles therin.

How recoueries by colluſion againſt tenants for terme of life, is no diſcontinuance, enacted Anno 32. H. 8. Chap. 44.

WHere diuers perſons ſeiſed of Lands and hereditaments, as tenants by the curteſie of England, or otherwiſe onely for terme of life or liues, haue heretofore ſuffered other perſons by agreement or couine betweene them had, to recouer the ſame againſt them in the Kings Court, by reaſon whereof, they to whom the reuerſion or remainder thereof hath belonged, haue after the deaths of ſuch tenaunts been driuen to their actions for the recontinuance and obtaining of the ſaid landes and tenements ſo recouered, and ſometime haue beene cleerely diſherited of the ſame: It is enacted, that all ſuch recoueries hereafter to be had by agreement of the partie, or againſt any ſuch particular tenant of landes, or hereditaments, whereof he is, or hereafter ſhall be ſeiſed, as tenant by the curteſie of England, tenaunt in taple after poſſibilitie of iſſue extinct, or otherwiſe for terme of life, ſhall from henceforth, as againſt ſuch perſons to whome the reuerſion

uerſion or remainder ſhall then appertaine, and againſt their heires and ſucceſſors bee clearely void. Prouided that this act extend not to any perſon that ſhall by good title recouer any hereditaments without fraude or couine againſt any ſuch particular tenant, by reaſon of any former right or title, nor yet to auoid any recouery to be had againſt any ſuch particular tenant by the aſſent and agreement of thoſe in the reuerſion or remainder, ſo that ſuch aſſent and agreement be appeare of record in the Kings Court.

How wrongfull diſſeiſin is no deſcent in the law, enacted An. 32. H. 8. Chap. 45.

WHere diuers perſons haue by ſtrength and without title, entered into landes and tenements, and wrongfully diſſeiſed and diſpoſſeſſed of the rightfull owners and poſſeſſers therof, and ſo being ſeiſed by diſſeiſin, haue therof died ſeiſed, by reaſon of which dying ſeiſed, the parties that were ſo diſſeiſed and diſpoſſeſſed, or ſuch other perſons as before ſuch diſcent might haue lawfully entred into the ſaid lands and tenements, be thereby clearely excluded of their entrie into the land, and put to their action for their remedy and recouery thereof: It is enacted, that the dying ſeiſed hereafter of any ſuch diſſeiſour, hauing no right or title therein, ſhall not be deemed any ſuch diſcent in the law, as to take away the entrie of ſuch perſons or their heires, which at the time of the ſaid diſcent had good title of entry

into the ſame. Except that ſuch diſſeiſor hath had the peaceable poſſeſſion of his lands or tenements whereof he ſhall die ſeiſed, by the ſpace of fiue years next after the diſſeiſin by him committed, without entry or continuall claime, by ſuch as haue lawfull title thereunto.

The limitation of preſcription, enacted Añ 32.H.8.Chap.46.

NO perſon ſhal ſue or maintaine any writ of right, or make any title or claime to any landes, tenements, rents, annuities, commons, pencions, portions, couodies, or other hereditaments, of the poſſeſſion of his auncestours, or predeceſſors, and declare any further ſeiſin or poſſeſſion of his auncestor or predeceſſor, but only of the ſeiſin or poſſeſſion of his ancestor or predeceſſor, which hath bene ſeiſed of the ſame within ſixty yeares, next before the teſte of the ſame writ, or next before the ſaid title or claime ſo to be ſued.

Limitation of 60 years

Alſo, none ſhall ſue or maintaine any Aſſiſe of Mordauncestor, coſinage, tayle, writ of Entry vpon diſſeiſin, done to any of his auncestours or predeceſſors, or any other action poſſeſſarie vpon the poſſeſſion of any of his auncestors or predeceſſor, for lands or hereditaments of further ſeiſin or poſſeſſion of them, but only his ſeiſin or poſſeſſion which was ſeiſed thereof within 50 yeares next before the teſte of the originall of the ſame writ. And none ſhall maintaine action for lands or other hereditaments vpon his owne ſeiſin or poſſeſſion therein, aboue 30 years next before the teſte of the originall of the ſame writ.

Limitation of 50 years

Limitation of 30 years

Item

Item, none ſhal make any auowry or coniſance for a rent, ſuit, or ſeruice, and alledge any ſeiſin of the ſame in his auowry or coniſance in poſſeſſion of his anceſtors or predeceſſors, or in his owne poſſeſſion, or in the poſſeſſion of any other, whoſe eſtate he ſhal claime to haue aboue fifty yéers next before the making of the ſayd auowrie or coniſance. Moreouer, all Formedons in reuerture, Formedons in remainder, and Scire facias vpon fines of lands or other hereditaments to be ſued, ſhall be taken for 50 yeares next after the title of action fallen. And if any do ſue any of the ſaid actions of writs for lands or other hereditaments or make any auowrie, coniſance, preſcription, or claime for any rent, ſuit, ſeruice, or other hereditaments: and it be proue that he or his anceſtors or predeceſſors were in actuall poſſeſſion or ſeiſin therein, at any time within the yéres before limitted, if the ſame be trauerſed or denied by the party, plaintif, demandant, or auowant, or by the party tenant or defendant, he and his heires ſhall from henceforth be vtterly barred for euer, of euery the ſayd writs, actions, auowries, coniſance, preſcription, title and claime hereafter to bée ſued or made for the ſame lands or other the premiſſes for which ſuch action, writ, auowrie, coniſance, title, or claime hereafter ſhall be ſued or made. Auowry. Barre.

Prouided, that all ſuch perſons which now haue any of the ſayd actions, writs, auowries, Scire facias, coniſance, preſcription, title or claime depending, or that hereafter ſhall ſue or bring any of the ſaid writs, or actions, or make any of the ſayde auowries, coniſances, preſcriptions,

titles, or claime, at any time before the feaſt of the aſcenſion of our Lord, which ſhall be in the yeare of our Lord, 1546. ſhall alledge this ſeiſin of their auncеſtors, or predeceſſors, or their owne poſſeſſion or ſeiſin, and alſo haue all other like aduantage in the ſame writs, actions, auowries, conſiſances, preſcriptions, and claimes, as they might haue had before the making of this Statute. Prouided alſo, that if any perſon be now within the age of xxj. yeares, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring any of the ſaid writs, or actions, or to make any auowries, conſiſances, preſcriptions, or claimes, it ſhal be lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaid auowries, conſiſances, titles, or claimes at any time within ſix yeares next after ſuch perſon now being within age, ſhall accompliſh the age of xxj. yeares, or now being couert baron, ſhal be ſole, or now being in priſon ſhall be at their liberty, or now being out of the Realme, ſhall come and be within this Realme. And that euery ſuch perſon in their ſayd actions, auowries, conſiſances, titles, or claimes to be made, ſued, or commenced within the ſayd ſix yeares, ſhall alledge the ſeiſin of their auncеſtors or predeceſſors, or of their own poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhall then claime. And alſo within the ſame ſix yeares ſhall haue like aduantage in the ſame, as they might haue had before the making of this act.

Whether eſtate ſhall take effect.

Prouided alſo, that if the ſaid perſons now being within age, or couert baron, in priſon, or out

out of this Realm, do die within age, or being couert, or in priſon, or out of this Realm, do deceaſe within ſix yeares next after they ſhall accomplith their full age, or ſhall bee at large within this realme, or ſhall become ſole, and no determination or iudgement had of ſuch title, actions, or rights, ſo to them accrewed, then the next heire of ſuch perſons ſhal enioy like aduantage, to ſue, demand, anoew, declare, or make their ſaid titles, claymes, or preſcriptions, within ſix yeares next after the death of ſuch perſon, as the ſayd infant after his full age, or the ſayd woman couert after the death of her huſband, or the ſaid perſon being out of this Realme, after his repayre or comming into the ſame, or the ſayd perſon impriſoned after his enlargement and comming out of priſon, might haue had within ſix yeares then next enſuing, by force of the prouiſion laſt before rehearſed.

Prouided alſo, that if any perſon before the ſaid feaſt of the Aſcention, ſue any of the ſayd actions, or make any anoewry, title, or claym, and the ſame happen by the death of any the parties thereunto, to be abated before iudgement or determination thereof had, then the ſayd perſons, being demaundants or anoewant, or making any ſuch conſiſance, preſcription, title, or clayme, being then a-lime: and if not, then their next heires may commence their action, and make the anoewrie, conſiſance, or claime vpon the ſame matter, within one yeare next after ſuch ſuite abated, and ſhall haue like aduantage to ſue, demaund, anoew, declare, or make their ſayd titles, claymes, or preſcriptions, within the ſayd one yeare, as the demaundants

in ſuch writ or ſuite abated, or as ſuch as did a-now or make conſuance, title, clayme, or preſcription, might haue enioyed in the former action or ſuite.

Attaint vpon falſe verdict.

Prouided furthermore, that if any falſe verdict hereafter be giuen in any of the ſaid actions, ſuits, auowrie, preſcriptions, titles, or claymes, then the party grieued may haue his attaint vpon euery ſuch verdict, & the plaintife in the ſame attaint vpon iudgement for him giuen, ſhall haue like reconerie, execution, and other aduantage, as heretofore hath béene vſed.

Of Fines. Chap. 47.

FInes haue their name, becauſe they make a finall end & determination of all ſuits, ſtrifes, and debates betweene men. For the due keeping whereof, it was enacted in the fourth yeare of King Henry the ſeuenth, that they muſt be ſolemnly before the Iuſtices of the common place, read and proclaymed the ſame Terme, and three Termes next following the ingroſſement, at which time all the pleas muſt ceaſe. And ſuch Fines ſhall be a ſufficient barre and diſcharge againſt all perſons, ſauing women that be couert baron, if ſuch women be not priuie to the ſame Fine, or ſuch as be within age, in priſon, out of the realme, or out of their right minds. But theſe Fines ſhall not conclude ne barre all Strangers which haue right to enter or to haue action, if they come within fiue yeres after ſuch proclamations made, or (in caſe the cauſe of action falleth vnto them,

them, after the fine so duely leuied) if they come & commence their action and suit within fiue yeares next after such cause of action to thē accrued. And they may sue against the takers of ỳ profits. But if they that haue right thereto, be within age, in prison, couert baron, or out of the realme, or not in their right memory, then their title or entry shalbe saued vnto them till they be full of age, out of prison, discouert & sole, within the realme, or of right mind: and then within fiue yeres after, their action or entry must be sued or made with effect.

Also by the said Statute it shall be a good plea for all strangers, to say, that they that were parties to the fine, nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore, in the 32. yeare of this King, for the auoiding of certaine doubts and ambiguities, it was enacted, that all fines, as well heretofore leuied, as hereafter to be leuied, according to the said Statute of Henry the seuenth, by any person of the full age of 21. yeres, of any lands or other hereditaments, being before the fine leuied, in any wise tayled vnto him, or any of his ancestours, in possession, reuersion, remainder, or in vse, shall be immediately after the same fine leuied, ingrossed, and proclamation made, a sufficient barre and discharge for euer, aswell against him and his heires, clayming the same onely by force of any such entayle, as against all other to their vse, so that the same fines be not leuied to any woman after the death of her husband, contrarie to the Statute made the 11. yeare of Henry the seuenth,

of lands and tenements of the inheritance or purchaſe of her husband, or of any of his anceſtours giuen to her in dower, for terme of life, or in taple, in vſe, or in poſſeſſion. Except alſo all fines leuied, or to be leuied, of any ſuch lands or hereditaments by the owners thereof, by any ſpeciall Act of Parliament, made ſith the ſaid fourth yeare of Henry the ſeuenth, be reſtrained from making any alienations, diſcontinuances, or other alienations of the ſame. Alſo of ſuch lands as be now in ſuit & variance in any of the Kings Courts, or whereof any euidences be now in demand in the Chauncerie, or which be alreadie recouered: Except alſo fines leuied, or to be leuied by any perſon, of lands or tenements granted to him, or to his anceſtours in taple, either by the Kings Letters Patents, or by vertue of any Act of Parliament, whereof the reuerſion is in the King. And confirmed in the 34. yeare of King Henry the eight.

Of Teſtaments or laſt Wills. Chap. 48.

Diuiſion.

TEſtamentum in Latine, is as much to ſay as mentis teſtatio, that is, a declaration or witneſſing of a mans mind. And there be two ſorts of Teſtaments: The one is called Teſtamentum ſcriptum, that is, a written Teſtament, or laſt will by writing: and the other is called Teſtamentum nuncupatiuum, a Teſtament nuncupatiue, which is when a man doth expreſſe by mouth his laſt will and Teſtament without writing,

Written teſtament.

The teſtament Nuncupatiue.

by

by calling before him certaine of his neighbours, in whoſe preſence he doth ſignifie by words his laſt mind & will. And this for the moſt part men vſe to do, when for feare of ſuddennesſe of death, they dare not abide the writing of their will. And this will (vnleſſe it be in certaine caſes) is as ſtrong and as ſure, as is a teſtament or laſt will put in writing, and ſealed with the ſeale of the teſtatour.

Alſo though a Teſtament by writing be not ſealed with the ſeale of the teſtator, yet is the Teſtament good and effectuall in the law.

And ye ſhall alſo marke, that where a man maketh once his teſtament and will, and afterward maketh another will by words, if his laſt will be proued before the Ordinarie, and by him put in writing, and inſealed with his ſeale, ſuch laſt will ſhall auoid the firſt will, vnleſſe it be in ſpecial caſes. And ſo alwaies the latter will and teſtament ſhall auoid the former.

Finally, by an Act made the 21. yere of King Henry the eight, it was ordained, that where part of the executors named in the teſtament, wherein any lands or tenements be willed to be ſold by them, refuſe to take vpon them the adminiſtration, and the reſidue do take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaid lands, made onely by thoſe executors that take the adminiſtration of the teſtament vpon them, ſhould be as good and effectuall, as if all the reſidue of the executors ſo refuſing had ioyned in the making of the bargaine and ſale.

The

of lands and tenements of the inheritance or purchase of her husband, or of any of his ancestours giuen to her in dower, for terme of life, or in taple, in vse, or in possession. Except also all fines leuied, or to be leuied, of any such lands or hereditaments by the owners thereof, by any speciall Act of Parliament, made sith the said fourth yeare of Henry the seuenth, be restrained from making any alienations, discontinuances, or other alienations of the same. Also of such lands as be now in suit e variance in any of the Kings Courts, or whereof any euidences be now in demand in the Chauncerie, or which be alreadie recouered: Except also fines leuied, or to be leuied by any person, of lands or tenements granted to him, or to his ancestours in taple, either by the Kings Letters Patents, or by vertue of any Act of Parliament, whereof the reuersion is in the King. And confirmed in the 34. yeare of King Henry the eight.

Of Testaments or last Wills.
Chap. 43.

Diuision.

Written testament.

The testament Nuncupatiue.

TEstamentum in Latine, is as much to say as mentis testatio, that is, a declaration or witnessing of a mans mind. And there be two sorts of Testaments: The one is called Testamentum scriptum, that is, a written Testament, or last will by writing: and the other is called Testamentum nuncupatiuum, a Testament nuncupatiue, which is when a man doth expresse by mouth his last will and Testament without writing, by

by calling before him certaine of his neighbours, in whoſe preſence he doth ſignifie by words his laſt mind & will. And this for the moſt part men vſe to do, when for feare of ſuddennelle of death, they dare not abide the writing of their will. And this will (vnleſſe it be in certaine caſes) is as ſtrong and as ſure, as is a teſtament or laſt will put in writing, and ſealed with the ſeale of the teſtatour.

Alſo though a Teſtament by writing be not ſealed with the ſeale of the teſtator, yet is the Teſtament good and effectuall in the law.

And ye ſhall alſo marke, that where a man maketh once his teſtament and will, and afterward maketh another will by words, if his laſt will be proued before the Ordinarie, and by him put in writing, and inſealed with his ſeale, ſuch laſt will ſhall auoid the firſt will, vnleſſe it be in ſpecial caſes. And ſo alwaies the latter will and teſtament ſhall auoid the former.

Finally, by an Act made the 21. yere of King Henry the eight, it was ordained, that where part of the executors named in the teſtament, wherein any lands or tenements be willed to be ſold by them, refuſe to take vpon them the adminiſtration, and the reſidue do take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaid lands, made onely by thoſe executors that take the adminiſtration of the teſtament vpon them, ſhould be as good and effectuall, as if all the reſidue of the executors ſo refuſing had ioyned in the making of the bargaine and ſale.

The

The difference betweene Executors and Administrators.

Chap. 44.

Executor is, when a man maketh his testament & last will, and therein nameth the person which shall execute his testament, then he that is so named, is his executor, and such an executor shall haue an action against euery debtor of his testator. And if the Executors haue Assets, that is to say, sufficient in their hands, then shall euery one to whom the testator was in debt, haue action against the executor, if he haue an obligation or speciaitie to shew. But in euery case where the testator might wage his law, there no action lyeth against the executor.

Assets in the hands of the executors.

Administrator is he to whom the Ordinarie committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lye against him, and for him as for an executor, and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plea, or for that he hath wasted the goods of the dead. But if the Administrator die, his executors be not Administrators, but it behoueth the Ordinarie to commit a new Administration. Howbeit, if a stranger, I meane him that is neither executor named in the testament and last will, nor yet Administrator appointed by the Ordinarie, will take the goods of the dead, and minister of his owne head and minde, without lawfull authoritie, this person shall be charged and sued as an executor, and not as an administrator, in an action which is brought against him by any creditor. But if the Ordinarie

Executor of his owne wrong.

make

make a letter ad colligendum bona defuncti, he that hath ſuch a letter, is not adminiſtrator, but the action lyeth in this caſe againſt the Ordinarie, as well as if he toke the goods by his owne hand, or by the hand of any other his ſeruant, by any other commandement.

An act of the probate of Teſtaments, made Anno 21. H. 8. Chap. 50.

NOthing ſhalbe taken by any, hauing authority to take probation, inſinuation, or approbation, of any Teſtament, where the goods of the Teſtator do not amount aboue the value of C. s. except to the Scribe for writing thereof, vj. d. And for the Commiſſion of adminiſtration of the goods of any dying inteſtate, not being likewiſe aboue C. s. vj d. Alſo none hauing power to take probate of Teſtaments, ſhal refuſe to approue Teſtaments, being lawfully offered vnto them in writing, with wax thereto affixed, ready to be ſealed, ſo that they be lawfully proued before the ſame Ordinary to be true. And when the goods of the Teſtator do amount aboue C. s. and not exceed xl l. none ſhall take for the probation, regiſtring, ſealing and writing of any ſuch Teſtament, aboue 3. s. 6 d. whereof to be to them that haue authoritie to take the probation, 2. s. 6 d. and the other 12. d. to the Scribe for regiſtring.

And where the goods amount aboue xl. l. then onely 5. s. to be taken: whereof to be to them that haue authority to take the probation, 2. s. and 6. d. and the other 2. s. 6. d. to the Scribe for

for the regiſtring, or els if he refuſe that .S.hi d. then he to haue for euery x. lines, euery line containing in length ten ynches, a peny.

And they that haue authoritie as is abouesayd, ſhall approue, inſinuate, ſeale, and regiſter the teſtaments, and deliuer them, ſealed with the ſeale of their Office, to the executors, for the ſumme abouesaid, and that with conuenient ſpeed, without any fruſtratorie delay.

And if any perſon die inteſtate, or the executors refuſe to proue the teſtament, then they hauing authoritie as is abouesaid, ſhall graunt the adminiſtration of the goods to the widow of the perſon deceaſed, or to the next of kin, or to both, after their diſcretion, taking ſuretie of them for the true adminiſtration of the goods and debts which they ſhall be ſo authoriſed to miniſter. And where one or diuers clayme the adminiſtration, as next of kinne, which be egall in degree of kindred, or where any one perſon deſireth the adminiſtration as next of kinne, where indeede diuers perſons be in equalitie of kindred: then in any ſuch caſe the Ordinarie ſhall be at libertie to take one, or moe, making requeſt, where diuers require the adminiſtration: or where but one or moe of them, and not all being in like degree, make requeſt, then the Ordinarie ſhall admit the widdow, and him or them only making requeſt, or any of them, taking nothing for the ſame, where the perſon deceaſed died not worth C. ſ. And if hee died worth C. ſ. and not aboue xl. l. then x. ſ. 6. d. onely to be taken. And the Executor or adminiſtrator calling to him the debtors, two at the leaſt, or ſuch perſons to whom any legacie was

made

made, and if they refuſe, then two next of kin to the perſon deceaſed, and in their default, two other honeſt perſons ſhall by their diſcretions make a true inuentorie indented of all the goods, which perſons ſwearing before the Biſhop or his Officers to be true, ſhall deliuer the one part thereof vnto them, and the other keepe himſelf. And none hauing authoritie to take probate of teſtaments, vpon paine contained in this ſtatute, ſhall refuſe to take any ſuch inuentory preſented and tendred to them. Inuentorie of goods.

Prouided, if any perſon ſhall diſpoſe at will by his teſtament, any lands or hereditaments to bee ſold, that the money or profits of the ſame, be accounted for goods or chattels.

And they hauing the authoritie aboue ſaid, vpon the deliuerie of the ſeale and ſignet of the teſtator, ſhall cauſe the ſame to be defaced, and incontinent ſhall deliuer to the executor without any claime: and if any require a copie of the teſtament, and inuentory, then they hauing authority or their miniſters, ſhall without delay deliuer them a copy taking therof, or elſe for ꝑ regiſtring of the ſame as before, for euery ten lines j.d.

Prouided, that where they hauing authoritie as is aboueſayd, hauing vſed to take leſſe for the probat or teſtaments, or other things concerning the ſame, then is here ſpecified, they ſhall take as they did before this act.

Now if any that haue authoritie to take probate of teſtaments, or other miniſters, doe attempt againſt this act, they ſhall forfeit for euery time to the partie grieued as much mony as they ſhall take contrary to this act. And ouer that x.s.

the

the one halfe to the King, the other to the party grieued, that will ſue by action of debt, bill, information, or otherwiſe in any of the Kings courts, wherein no eſſoin, protection, nor wager of the law ſhall be allowed. And euery of them ſhall be charged for himſelfe, and for none other.

Prouided, that euery one hauing authority aboueſaid, may call before them euery perſon ſo named executors, to the intent to proue and refuſe the teſtament, and to bring inuentories, and to do euery other thing concerning the ſame, as they might before this act, ſo neyther they nor their miniſters ſhal take aboue the fees limitted by this act.

How landes and tenements may be by Teſtament or otherwiſe diſpoſed, enacted Añ 32. H. 8.

EVery perſon hauing lands or other hereditaments holden in ſocage, or of the nature of ſocage tenure in chiefe, and not hauing any lands or hereditaments holden of the king by knights ſeruice, or ſocag tenure in chief, or of the nature of ſocage tenure in chiefe, nor yet of any other perſon by knights ſeruice, may giue, diſpoſe, & deuiſe aſwell by teſtament in writing, as otherwiſe by an act lawfully executed in his life, all his ſayd lands or hereditaments, or any of them.

And euery perſon hauing lands or other hereditaments holden of the King in ſocage, or of the nature of ſocage tenure in chiefe, and hauing alſo any other lands or hereditaments, holden of any other perſon in ſocage, or of the nature of ſocage tenure

tenure, and not hauing any hereditaments holden of the King, or of any other by Knights ſeruice, may from the ſaid time giue and deuiſe, aſwel by teſtament in writing, as otherwiſe by any Will lawfully executed in his life, all and euery of them at his pleaſure: ſauing to the King all his right of primer ſeiſin and reliefes, and alſo all other rights and duties for tenure in ſocage, or of the nature of ſocage tenure in chiefe, as heeretofore hath beene accuſtomed, the ſame to be taken and ſued out of the Kings handes by the perſon to whom any ſuch lands ſhall be diſpoſed or deuiſed, in like manner as hath been vſed by any heire or heires before the making of this ſtatute. And ſauing and reſeruing alſo fines for alienations of ſuch lands and hereditaments holden of the king in ſocage, or of the nature of ſocage tenure in chiefe, whereof ſhall be any alteration of freehold or inheritance made by will or otherwiſe, as is aforeſaid. Primer ſeiſin. Reliefes.

Item, all perſons hauing lands or other hereditaments of eſtate of inheritance holden of the King in chiefe by Knights ſeruice, or of the nature of knights ſeruice in chiefe, may giue, will, or aſſigne, two parts of the ſame, in three parts to be deuided, or elſe as much thereof as ſhall amount to the yeerely value of two parts of the ſame, in three parts to be diuided in certainty and by ſpeciall diuiſions, as it may be knowne in ſeueralty, for the aduancement of his wife, preferment of his children, and payment of the debts, or otherwiſe at his pleaſure. Hauing to the king aſwell the wardſhip and primer ſeiſin of as much as ſhall amount to the clear yeerly value of

the third part thereof, without diminution, dower, fraud, couin, charge, or abridegment thereof, as alſo all fines for alienations of all ſuch landes holden of hym by knights ſeruice in chief, wherof ſhall be any alteration of freehold, or of inheritance made by will or otherwiſe. And euery perſon hauing landes or tenements of eſtate of inheritance holden of the King in chiefe by knights ſeruice, and other lands holden of him, or of any other by knights ſeruice, or otherwiſe, may giue or aſſigne by his teſtament, or otherwiſe, as is afore ſaid, two parts thereof, in three parts to bee diuided, or elſe as much thereof as ſhall extend to the yearely value of two parts to bee diuided in certaintie. Sauing to the King, as well the wardſhip and primer ſeiſin of as much as ſhall amount to the yearly value of the third part, without diminution, &c. As alſo for all fines for alienation, as is aboue ſaid.

Fines for alienation.

Item, euery perſon holding lands or tenements onely, of any other than the King by knights ſeruice, and other lands and tenements in ſocage, or of the nature of ſocage tenure, may giue, diſpoſe, or aſſure by teſtament or otherwiſe two parts thereof holden by knights ſeruice, or as much as ſhall amount to the full yearly value of two parts, and alſo of the Landes and tenements holden by ſocage, or of the nature of ſocage tenure, at his pleaſure: Sauing to the Lord of the lands and tenements holden by knights ſeruice for his wardſhip, as much therefore as ſhall amount to the cleere yearely value of the third part, without diminution, &c.

And euery perſon holding onely of the King by

by knights ſeruice, but not in chiefe, and alſo other hereditaments of others by knights ſeruice, and holding alſo other hereditaments of any other perſon in ſocage, or of the nature of ſocage tenure, may giue and aſſure by his laſt will, or otherwiſe, two parts of that is holden of the king by knights ſeruice, and two parts of that is holden of any other perſon by knights ſeruice, or as much of either of them as ſhall amount to the full yearely value of two parts, and alſo all his lands and tenements ſo holden in ſocage, or of the nature of ſocage tenure. Hauing alwell to the king the wardſhip of as much as ſhall extend to the cleare yearely value of the third part of the ſame, ſo holden of him by knights ſeruice, without diminution &c. As alſo to the lords of whom any of the ſaid Lands beene holden by knights ſeruice, for the wardſhip as much of the ſame as ſhall amount to the cleare yearely value of the third part, in manner aboue declared. And if that third part, which in any of the caſes aboueſaid, ſhall come to the king, doe not amount to the cleare yearely value of the full third part of all the ſaid hereditaments, whereof the king ſhall be intituled to haue the cuſtodie or primer ſeiſin: then the king may take into his hands as much of the other two parts of the ſaid hereditaments, as with that of the ſame hereditaments remaining in his hands, ſhall make vp the cleare yearely value of the third part thereof, ſo to be had to him in time of wardſhip & primer ſeiſin. And like benefit to be giuen to euery Lord, of whom any ſuch hereditament ſhal be holden by knights ſeruice, concerning only his third part for title of wardſhip.

Alſo all perſons ſhall ſue their liueries for poſ-ſeſſions, reuerſions, or remainders, and alſo pay reliefs and heriots, like as they ſhould haue done before the making hereof. And fines for alienati-on ſhall be payd in the Chauncery vpon writs of Entrie in the poſt to be obtained there, for com-mon recoueries to be ſuffered of any lands hol-den of the King in chiefe, in like maner as is vſed vpon alienations of lands ſo holden in chiefe by fine or feoffement.

Prouided that in ſuch caſes where fines for alienation ſhal be payd in the Chancery for writs of Entry in the poſt, as is aforeſaid, none other fine ſhalbe payed there for any ſuch writs.

Item, where two or more perſons hold of the king by knights ſeruice ioyntly to them, and to the heires of one of them, and he that hath the in-heritance thereof, dyeth, his heire being within age, the king ſhall haue the ward and mariage of the body of ſuch heire, the life of the freeholder or freeholders of the lands ſo holden by knights ſer-uice notwithſtanding.

Sauing to all women ſuch right and title of Dower as they ought to haue of any lands or te-nements to be aſſigned vnto them out of the two parts of the ſaid lands or tenements ſeuered from the third part, as is aboueſaid, and not otherwiſe: And ſauing alſo to the King the reuerſion of all ſuch tenements in ioynture, and dower, imme-diately after the death of ſuch tenants, if they ſhall happen to die, during the nonage of the Kings wards.

Anno 32. H. 8.

IT is enacted, that from the first day of Julie in the peare of our Lord, 1540. all Marriages within this Church of England, contracted betweene lawfull persons, as by this act we declare all persons to be lawfull that bee not prohibited by Gods law to marie, such marriages, being contracted and solemnized in the face of the Church, and consumate with bodily knowledge of fruit of children, or child being had therein betweene the parties so maried, shal be deemed and taken to be lawfull, good and indissoluable, notwithstanding any precontract of matrimony not consumate with bodily knowledge eyther of the persons so maried, or both shall have made with any other before the time of contracting that marriage which is solemnized and consumate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, law, or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, or impeach any marriage without leuiticall degrees. And that no person shall after the first day of July aforesaid, be admitted to any of the spirituall courts within this the Kings Realme, or any his other Lands and Dominions to any proces, plees, or allegation, contrarie to this Act.

FINIS.

This Table doth readily ſhew *where the principall matters contained in* this Treatiſe are to be found; the letter [A] *ſignifying the firſt page or* ſide, and the letter (B) the ſe*cond page or ſide.*

Iuſtices

Finis Tabulæ.